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SUPREME COURT OF THE UNITED STATES
October Term 1973

No. 73-434

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,
Petitioners,
-v-
RONALD BRADLEY, et al.,
Respondents.

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, et al.,
Petitioners,
-v-
RONALD BRADLEY, et al.,
Respondents.

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,
Petitioner,
-v-
RONALD BRADLEY, et al.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1973
CERTIORARI GRANTED NOVEMBER 19, 1973

VOLUME IV
Transcript – Intra-City Plans and Metropolitan Hearings

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[47] PATRICK A. McDONALD, resumed the stand as a witness herein, and having been previously duly sworn, testified further as follows:

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[50]...

A. Basically, Plan C talks in terms of the transporting or busing of children certain days of the week to certain paired schools. I don't think that that would accomplish the goal of either integration or desegregation.

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[57]...

Q.(By Mr. Flannery) Mr. McDonald, you testified that the concept we are discussing had proved in the pilot program relatively unsuccessful at the high school level, is that correct?

A. Yes, sir.

Q. It is fair to say, is it not, on the basis of the November 1 report on progress of the magnet school program at page 16 and I am quoting:

"The impact of student move, both at the high school and middle school level on the racial balance of identical schools throughout the city has generally been less than 2 percent."

That was the conclusion, am I correct in my [58] reading of the conclusion at page 16 of the November 1 report?

A. I don't think that is a conclusion. I think it is one sentence in a multi-page document. I think what they are indicating there is the fact that this was a pilot project, that it wasn't designed to affect more than a great number of students and they are talking about the actual student movement. The actual number of students affected, of course, is much beyond 2 percent.

Q. Can you tell me, sir, at the high school level how many white students chose whiter schools than those they were attending?

A. No, sir, I don't have that statistic at my fingertips. It is in the progress report.

Q. Would it be far off to say approximately 836?

A. I really don't know what the number would be. I would point out when you say whiter schools, I think we are into value judgments as to what is a whiter school or not.

Q. A higher percentage –

A. (Continuing) What is an integrated or desegregated school.

Q. A higher percentage of white students than the school from which they were moved or which they previously attended?

A. I don't know the exact number and I don't think the number is really important, because if you take a white student at a school which, say, had 300 black students and 200 [59] white students and one white student left to go to a school where there were more white students, say 50 percent white and 50 percent black, you might say that is not helping the integration process. I would submit that it is because you have taken a student from a segregated situation and put him in an integrated situation and the fact whether it is one white or two white or three white students wouldn't really make a great deal of difference in the school he came from.

The point we are trying to do is really to have an integrated situation as opposed to a mere 1,2 or 3 percent in a school.

Q. Without quarreling, Mr. McDonald, with the value judgments, would you turn to page 16 of the report to which I have referred and read aloud for the Court starting at the second full paragraph "White students" –?

(Reading) "White students, on the other hand, did not move into majority black schools in any large numbers. Only nine of those who changed schools selected a curriculum offered in a majority black school. (An additional 85 chose to remain to their neighborhood schools for the magnet curriculum even though the school's racial balance left them in a relatively small minority.)

[60] "Of the 520 white students who left majority black schools to enroll in majority white schools, 326 came from schools which are more than 90 percent black in their enrollment."

I think that merely re-enforces what I am saying that if you take a student, a white student, from a school that is well over the 90 percentile in black students already, you really haven't segregated the school. It is already segregated.

Q. But, neverthless, were those the data that you had in mind when you testified earlier that at the high school level the program had not been effective?

A. I think my testimony is that it has been relatively ineffective. It has been effective in four or five schools and being of some assistance, but it is not as effective as it should be, and I am certainly not satisfied with it.

Q. If I understood the future of the high school program there will be four general curriculum high schools, is that correct, with approximately 1500 kids each?

A. Yes, sir, that is correct.

Q. And they will be balanced, did I understand that to be your testimony?

A. Yes, sir, through the same process that we used in the [61] middle schools, by application, keeping that balance as close to 50-50 as possible.

Q. Well, sir, suppose that the choice system that you plan for the middle schools does not result in the four general high schools being balanced, does the system have a mandatory alternative in mind?

A. Not in contemplation of this particular plan.

Q. What reason do you have to believe that the four general schools will each in fact be approximately 50-50?

A. First, they will be the only four general curriculum high schools in the City of Detroit and the school district of Detroit has on the high school level about 70-some thousand students, so that we are talking about 6,000 out of a possible 70,000 electing general curriculum. Inasmuch as that is the usual program now it would be most improbable that at least 6,000 would not so elect.

Secondly—Q. (Interposing) Excuse. me. May I interrupt you there. Do you have any projections by race concerning which curricula, including general, high school pupils do elect?

A. Projections?

Q. Yes, sir.

A. No, sir.

Q. I'm sorry. Continue with your answer.

***

[70] Q. Mr. McDonald, turning to an unnumbered page one-fifth of the way through I would ask you to begin at the top of the page, if you will, and read that page aloud for the record through the first full paragraph on the following page. I don't mean to restrict you to that, but if you will do so.

A. (Reading)

"First introduced in September, 1957, the Science and Arts Program was offered at Cass Tech and Mumford High Schools.

"The program operated on the basis of invitations to the top 5 percent in academic achievement throughout the city.

"From the beginning, this program attracted large numbers of students to Cass Tech and relatively smaller numbers to Mumford. As the movement of black families into the Mumford area began to change the racial composition, it affected the academic reputation of Mumford in the eyes of many parents. The program then declined rapidly at Mumford and large numbers of white students from Mumford elected to go to Cass.

"In the summer of 1965 the movement of white students with high academic achievement from Mumford to Cass became a matter of serious [71] concern to the parents' organization in the Mumford area. As a result of their expression of their concern to the Board of Education the basis of the science and arts program was re-examined and a new plan announced for the fall of 1965. Under the new program four centers for Science and Arts were established as Cass, Mumford, Mackenzie and Pershing, the latter three schools all undergoing racial change and having grave fears over the loss of high-achieving students and decline in general levels of achievement.

"With the introduction of four centers for Science and Arts programs, each high school was assigned a geographic area from which it could draw its students. The Science and Arts attendance area for Cass Tech was limited principally to the inner city while the other three schools had the opportunity of recruiting from outlying white high schools.

"The revised basis for the Science and Arts Program was further supported by a Title I funded program for improved services in the three schools.

"The revised basis for the Science and Arts Program failed to attract a significant [72] number of students to the three programs. Simultaneously most of these students who strongly decided to escape from Cass Tech were able to do so by enrolling in other specializations which the school offered.

"In the fall of 1970 Science and Arts Programs will be continued only at Cass Tech and will be opened only to students from the entire city."

***

[98]...

Q. Mr. McDonald, if I understood your testimony correctly, the magnet schools would be in your judgment of significantly enhanced educational quality?

A. Yes, sir.

Q. And they would involve greater per-pupil expenditures?

A. Yes, sir.

Q. Mr. McDonald, what would happen with respect to the per-pupil expenditures at schools attended by children in those grades which were not magnet?

A. It would depend upon the total budget of the school system and what funds are available.

Q. And if supplementary special funds from some source were not available you would be faced with the prospect, would you not, apart from race, of running a dual system?

A. No. We would be faced with the prospect of expending more sums in some schools and less sums in other schools.

Q. All right, sir, I will accept that amendment.

[99] A. That is not a great set of alternatives to look forward to, but at the same time a parent would have a choice of either sending his child to a neighborhood school where he knows less funds are being expended or to a magnet where he knows more funds are being expended and the child is going to engage in an integrated experience.

Q. Not every person would have quite the same choice because we would run out of choices when we ran out of white kids at your 60 percent black figure, isn't that right, sir?

A. That is correct.

Q. Mr. McDonald, am I correct in understanding that the approximate cost this year at the magnet school level is $305 extra per pupil?

A. That is the amount that is mentioned I believe in the progress report.

Q. And the projection for the coming year is on the order of $30 to $150 per pupil?

A. I couldn't verify that particular figure.

Q. Is that the kind of distinction you were drawing between schools when you spoke this morning of one parent choosing the $10 eudcation and another the $1 education?

A. I don't believe I mentioned a $10 education or a $1 education.

Q. I'm sorry, a $10 bill or $1 bill, I don't mean to mischaracterize.

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EUGENE KUTHY

[119] DIRECT EXAMINATION BY MR. BEER:

Q. Mr. Kuthy, how are you employed?

A. I am vice president of the American Academy of Transportation, a non-profit transportation and consulting group in Ann Arbor.

Q. Does the American Academy of Transportation deal with bus transportation to any great extent?

A. A rather significant extent, particularly in the State of Michigan where we worked on a number of federally-funded transportation studies and bus transportation programs and investigation of school transportation problems.

Q. What are some of the communities in which you perform that [120] function?

A. Flint, Genesee County, Muskegon and Muskegon County and Kalamazoo and Grand Rapids.

Q. Have you worked in a consultant capacity for the State of Michigan as well?

A. That is correct. We are presently putting together the State of Michigan public transit information reporting system.

Q. Mr. Kuthy, are you now or have you been employed in academic capacities?

A. Yes. I was faculty member at the University of Michigan, Dearborn campus, in the Business Administration School.

Q. I take it that your background then is in business and business analysis and that leads you to transportation?

A. Yes.

Q. What positions did you hold prior to that, performing those functions?

A. I was a cost analysis with the Ford Motor Company and in the past I have also been a contract administrator with Chrysler Corporation and Burroughs Corporation.

Q. Have you written or published any articles or documents in the field of transportation?

A. Yes. There are a series put out by the American Academy of Transportation that were reports incident to transportation studies or demonstration programs that my organization has[121] completed.

Q. Are these such reports (indicating)?

A. Yes. This is a design for unified regional mass transportation systems that was produced for the Flint Transportation Authority in Genessee County.

MR. BEER: I don't offer this as evidence, but simply an indication of Mr. Kuthy's credentials.

THE COURT: I understand.

MR. BEER: I offer this to counsel. At this time the Board would submit Mr. Kuthy as an expert in the area of transportation in particular regard to bus transportation as that transportation exists in the State of Michigan.

THE COURT: Cross-examination on his qualifications?

MR. FLANNERY: Just one question, your Honor, on voir dire, if I may.

Mr. Kuthy, would you tell us more explicitly what you have done with respect to school busing?

A. Yes. In Flint, Michigan, Genesee County, and also Muskegon, Michigan in the City of Muskegon we examined the feasibility of consolidating public mass transportation with school bus transportation.

To my knowledge both of those studies are[122] unique to this state and it is my understanding to some extent nationally as well.

MR. FLANNERY: What was your role in that process?

A. I was the study leader in both instances, the principal investigator. In one instance I wrote the final report.

MR. FLANNERY: Thank you, your Honor. I have no further questions.

MR. RITCHIE: No questions on voir dire, your Honor.

THE COURT: Mr. Sachs?

MR. SACHS: No questions.

MR. KRASICKY: No questions.

THE COURT: You may proceed.

MR. BEER: I take it the witness is qualified?

THE COURT: I believe so.

MR. BEER: Thank you.

I would like to introduce Mr. Kuthy's vita in evidence, if I may, your Honor.

(A vita was marked Defendants' Exhibit C-3 by the reporter.)

THE COURT: It may be received.

MR. BEER: I would note for the record[122a] the report on Muskegon County is mentioned in the vita.

Q. (By Mr. Beer, continuing) Mr. Kuthy, Dr. Gordon Foster, who Plaintiff has informed me will testify as their expert in presenting the Detroit Plan which Plaintiffs have propounded estimates that his plan would require the transportation of some 75,000 children within the City of Detroit, not counting those who ride regularly-scheduled bus lines. Would you have a professional opinion as to how many buses would be required to transport that many children?

A. I would estimate that approximately 750 buses would be required to transport some 75,000 students. The numbers I have arrived at for that particular coefficient is primarily based on the experience in both Genesee County and in Muskegon County.

In Genesee County almost 50,000 students are transported with a fleet of approximately 435 to 450 vehicles. In Muskegon County some 193 vehicles were used for approximately 18,000 students being transported. That works out in one instance to about 90 students per vehicle and in the other about 108 or 109 students per vehicle.

I would submit that on the basis of that and experience I have had in looking at other school situations that a rough test of

approximately 100 students per vehicle is an adequate way to measure your vehicle requirements.

[123] I further substantiate that on the basis that that accommodates not only the precise number of vehicles for student carriage plus, includes the spare vehicles for backup, breakdown, maintenance and in addition to that, as all averages, it accommodates the proposition that some school districts in the County are of long distances and hence long runs in terms of mileage and in terms of running time. It accomodates the differences in school start and quit times and the spread between various schools start and quit times and accommodates vagaries of geography and the rest.

Q. I take it that the average of one bus per 100 pupils constitutes more than one run per bus per day, is that correct?

A. Yes. Our studies in both Genesee and Muskegon Counties showed wide variances in the number of runs per bus.

If I recall correctly in Genesee County the variance ranged from 1.1 to 3.4 runs per bus. In each instance the variables I mentioned affected the number of runs per bus, the spread between the start and quit times, the average length of the run, the numbers of stops, the density of student distribution, et cetera.

Q. So what we are really talking about is an average situation when all of these average factors boil down to the average of each bus making two runs per day and transporting 50[124] children per run?

A. On the average I would comment that is a good number to work with, sir.

Q. Mr. Kuthy, Dr. Foster's testimony is not yet before us. The figure of 75,000 remains to be put to proofs. Let me ask you this question in a hypothetical framework. Suppose it were necessary to have either more or less students transported, would that significantly vary the figure of one bus per 100 students that you mentioned?

A. I am not sure it would be an entirely straight line proposition, but it seems to suggest that the 100 students per bus number is a fairly solid one and I would believe that if the number of students to be transported went up, accordingly almost in a one-to-one relationship the number of buses required would go up.

***

[131]...

THE COURT: Well, am I to take your answer, witness, to indicate that is from the observations you have had an opportunity to make of district school facilities that that is true?

A. Yes, sir.

THE COURT: All right. It may stand.

Q. (By Mr. Beer) Mr. Kuthy, is school bus transportation common within the Detroit metropolitan area, meaning by that at Detroit–Wayne County–Oakland County–Macomb County?

A. Yes. I am probably most familiar with my own home county, Oakland County, where I am not sure of the exact number, but it is approximately 35 school districts within that county that provide school bus transportation to students within the districts.

Q. Mr. Kuthy, it has been suggested in the remarks of counsel to the Court yesterday that perhaps should the Court find that a metropolitan remedy is called for but finds further that it was unable to implement such a remedy by this September that rather than the Court considering the Plaintiffs' plan [132] for the City of Detroit alone which Plaintiffs' expert has estimated would require the busing of 75,000 students, I wonder if you would, with regard to transportation, compare the feasibility of busing on a metropolitan basis in the metropolitan Detroit area with the feasibility of providing such transportation on the scale mentioned by Plaintiffs in the City of Detroit.

MR. KRASICKY: I think before the witness is allowed to answer I think we ought to be told what is meant by the "metropolitan area." There has been no mention..

MR.BEER: I believe I stated Wayne, Oakland, Macomb Counties.

MR. KRASICKY: The entire three-county area?

MR. BEER: Yes, as pursuant to the plan submitted by the Detroit Board.

THE COURT: You may answer.

A. If I understand that question correctly you would like me

to compare the feasibility of school busing within the City of Detroit as opposed to the three–county metropolitan area?

Q. Yes, assuming a unified basis for that transportation within the metropolitan area, pursuant to a metropolitan plan.

A. Yes. I think probably the first place to start in analyzing that particular question would be to look at it from the standpoint of short term implementation and the longer–term [133] implementation and cost of savings.

Q. Fine.

A. Initially there would be a serious question in my mind if the Detroit School District alone were to have a school busing transportation system provided here. Initially it would be my feeling that the required number of buses to be purchased, should they be public transit vehicles, you would probably not be able to get 750 buses, as I understand the number, for the fall term.

I base my answer primarily on the fact that the production of diesel transit vehicles is primarily in two manufacturers in the country, the total production of one of those manufacturers last year was only about four times the number of buses that we are talking about here.

In addition to that I would assume–– I will qualify that –– the Department of Street Railways in Detroit in the past has purchased, in the past few years, exclusively all of its vehicles under Federal Government grant programs through the Urban Mass Transportation Administration. I am familiar with the processing time to obtain such grants and I would feel that the timing would not be sufficient unless some emergency procedure were made other than which is currently followed in the Urban Mass Transportation Administration.

The processing of capital grants, I have [134] processed one of these myself and participated in it in the City of Flint, Michigan. It takes from six months to one year.

In addition to that diesel transit vehicles being used exclusively in the City of Detroit would require the Department of Street Railways to either purchase additional or rent additional maintenance facilities other than that which they presently have, unless the decision were made to store these vehicles outside and I

have already recited the difficulties with that particular question.

From a short term basis it seems to me that it would be easier and more implementable to look at this on a tri–county basis where there already is a base school bus transportation system in all three of the counties in the western portion of Wayne County, in a good portion of Oakland and Macomb Counties. There they have school bus repair facilities and servicing facilities. They have a cadre of school bus drivers and they have established driver education programs and in my estimation it would be easier and faster to implement this program if it were on a metropolitan basis.

The question of vehicle availability I think could be answered as well. There are six principal manufacturers of school bus equipment. The traditional time for ordering school bus equipment is in March and April of a [135] calendar year for delivery for the fall semester. It would seem to me more feasible at this time to acquire school bus vehicles certainly new. If decisions were made to acquire used vehicles, that would be a different story altogether.

Another compelling reason, it strikes me, for looking at the metropolitan solution to this particular problem is based on the work my organization did in both Genesse County and Muskegon County where total public cost savings over the long term from consolidating public school operations and using a larger base realized economies of scale that are extremely important both in the short term and in the long term. Capital equipment economies are realized in this fashion and operating economies are realized in this fashion.

Q. Let me interrupt you just a minute. When you talk about consolidation, do you mean consolidating between school districts or are you referring to consolidation between school districts and public transit?

A. I refer to both issues.

Q. I see.

A. If these economies stand, a substantial number of economies result from the consolidation of all school districts and another order of economies are achieved in the consolidation [136] of public school busing with public mass transit operations.

I further submit that the institutional framework to accomplish a reasonable busing solution is here in terms of a regional transportation body, Southeastern Michigan Transportation Authority, so that the framework for such an effort, in my opinion, is extant at the present time.

Q. Does the jurisdiction of that body include at least Wayne, Oakland and Macomb Counties?

A. Yes, it includes six counties, the three you mentioned, Monroe County, I believe St. Clair County and Washtenaw County.

Q. In your professional opinion, Mr. Kuthy, would there be any other available administrative structure within which to operate such a coordinated transportation system?

A. I think not.

Q. Mr. Roumell reminds me I left one fact off your vita which I would note for the record. You are a member of the Oakland County Planning Commission?

A. I am, sir.

MR. BEER: Thank you. I have nothing further.

[137] CROSS–EXAMINATION BY MR. FLANNERY:

Q. Mr. Kuthy, how big are the Genesee and Muskegon School Systems geographically and in terms of numbers of students?

A. I cannot answer in terms of square miles, sir. The Genesee County is approximately the same physical size as either Oakland County or Wayne County but I can't be responsible for square mileage; similarly with Muskegon County.

Q. Do you know the approximate numbers of students in either or both systems?

A. Yes. The Genesee County School System, I can't answer that with certainty. I know the numbers of students transported, but I can't answer with certainty the total number of students in either of those counties.

Q. Can you give us an approximation, sir, of the numbers of students transported and what percentage, roughly, if you know, of the total numbers of students in the systems are transported?

A. In answer to the number of students transported, approximately 50,000 in Genesee County and in Muskegon County approximately 20,000 are transported.

Q. If I found out on my own how many kids there are in the systems I could do the percentages easily enough?

A. Yes, sir.

[138] Q. Could you estimate for us, Mr. Kuthy, with respect to those systems, the average travel time per trip of each bus?

A. Sir, are you referring to the average running time in miles per hour of the vehicle or the average trip length in terms of time?

Q. I would like to elicit an average of how long the kids are on the buses between pickup points and delivery points? Is that a meaningful way to put the question?

A. I think that is total elapsed trip time from commencement of the pickup of the student to delivery at the school.

Q. Yes, sir.

A. That varies, sir, with the variables I mentioned earlier, the number of stops, the length of the run and, well, those are the two primary variables. I can't tell you that with certainty. I could approximate and say about a maximum of one–half hour.

Q. What mileage would that be, the maximum mileage?

A. Again I would estimate because the average miles per hour speed in the rural portions of those counties is about 15 miles per hour so half an hour would make the average run about seven and a half miles.

Q. I just want to make sure I understand. The average run is seven and one–half miles; does that make the average trip a half hour or is that the longest trip in the system?

[139] A. No, there are longer trips.

Q. Do you recall what the longest trip would be in terms of time and mileage, if you will, sir?

A. No, sir, I cannot.

Q. Do you know, Mr. Kuthy, in your experience that trips on the order of an hour are not unconventional?

A. School bus trips on the order of an hour are not uncon-

ventional?

Q. Yes, sir.

A. If you are again referring to the total elapsed time of the bus from the first pickup point to the dropoff at the school, I would say that that is not unconventional. If you are referring to the amount of time an individual student would spend on the bus, that varies enormously again with the character of the stops and the points along the route that the student is picked up.

I personally saw one school bus run where a student lived in a very unaccessible rural area rather far off the route. That student rode the longest time, of course, and the other students rode proportionately less because of the deviation to pick up this particular student.

Q. Yes, but it is true, isn't it sir, in systems all over the United States there are trips per student of upwards of an hour?

A. From published reports that I have seen I would say yes.

[140] Q. Mr. Kuthy, do you have an opinion, sir, whether from the standpoint of traffic hazards and weather hazards, do you have an opinion as to whether going to school by bus rather than on foot is more safe or less safe?

A. With the two qualifications you suggest of traffic and weather hazards, I would conclude that traveling to school by bus would be safer and more pleasant than walking, in general. If I am assuming by weather conditions you mean bad weather conditions such as rain or snow or sleet as opposed to more delightful conditions of sunshine and soforth. The reason I add that caveat is that bus ridership on public systems and on school bus systems tends to decline in more idyllic weather.

Q. That is an interesting statistic. Mr. Kuthy, from your experience in school bus transportation in dealing with school systems, do you know, sir, whether it is the view of school administrators that transporting pupils to school by bus produces better results with respect to tardiness and absenteeism than were the same students to walk to school?

A. No, sir, I cannot answer that. That is beyond my experience.

Q. Mr. Kuthy, do you know what the experience of school systems in Michigan has been with respect to the numbers or percentages of pupils transported to schools, that is, over a 20 or 30 year period? Is that a growing phenomenon or static [141] phenomenon or declininc phenomenon and would you tell us what you know about that both in urban systems and rural systems.

A. The answer will have to be complicated to this extent, sir. In growing, unincorporated areas, because of the nature of the Michigan State Aid Reimbursement Formula which provides State Aid Reimbursement to school districts of up to 75 percent of the total cost of school bus transportation. It only goes to unincorporated areas.

Accordingly, in the development or maturation cycle of so–called suburban counties, if I can be indulged to use that term commonly, when the area is developing and is unincorporated the cost and the number of students and the size of school busing systems goes up. When the area becomes incorporated then changes take place.

I have witnessed a shrinkage in the several instances; I can cite one in particular: the Mona Shores School District in Muskegon County, through the fortuitous circumstance of being incorporated lost its state aid reimbursement and hence the school district was required to pay the entire costs of transporting students and there was a dramatic shrinkage in the amount of school bus transportation provided.

It is my understanding that conversations [142] with other school districts administrators that in those instances where because equipment was available and the district had the funds to do so, students were picked up, so–called ineligible students, from the standpoint of state aid reimbursement because they live within a one and one–half mile radius of the school, they were picked up as an accommodation and it was an accommodation apparently approved by the people in their school district, at least the cost of so doing, and so there is a variance depending on the circumstances, I suggest.

As to whether there is a general shrinking or a general growth I can only probably conclude there has been a general increase in

the amount of school bus transportation and I think the gauge that I would use would be the amount of state aid reimbursement dollars over the past decade which has been steadily climbing.

I guess I cannot be totally responsible for that because there may be elements of inflation that get into that picture of that state aid reimbursement increasing, sir.

Q. Would I be correct in understanding that on the basis of the factors known to you there has been a sustained increase in school bus transportation?

A. Yes, sir.

[143] Q. Mr. Kuthy, I might have misunderstood an answer you gave to Mr. Beer and I would like to clarify it for my own mind, if you will. Did I understand you to say that from the standpoint of your recommendation or the optimum situation there should be one service bay per seven vehicles?

A. Yes, in a public transit system that is the standard in the industry.

Q. So that for 700 buses we would be talking about 100 service bays?

A. Yes, sir. That is standard again for qualification and to avoid misunderstanding is related to the public transit system as opposed to public school bus systems. I know of no such standard, at least in this state.

Q. For public school buses?

A. For public school buses, yes.

Q. Do you know what the practice is?

A. I could only gather by inference the practice seems to be one service bay for approximately 10 vehicles.

Q. Thank you. I understood in response to another question by Mr. Beer that it would be difficult to secure 750 public transit vehicles by the fall of 1972?

A. Yes, sir.

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[155]...

Q. Yes. Let's assume the Court approves the plaintiffs' plan and Detroit must transport 75,000 children in September, should they do so with buses that are gasoline buses, in your professional opinion?

A. Let me start my answer this way: There are two real questions involved there – certainly one is cost. The gasoline powered large size traditional 66-passenger yellow school bus costs about $10,000. The equivalent size in a diesel transit vehicle which would be a 53 passenger bus because of the [156] standee capability and stanchions and the like for such capabilities in a public transportation vehicle that are not available in a school bus vehicle, the cost is about $32,000 to $35,000 per vehicle.

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[157] Q. Are you suggesting a gasoline school bus is unsafe?

A. No, I'm not, sir.

Q. You are simply saying the diesel bus is safer?

A. Y-s, sir.

Q. In your direct testimony you expressed some concern over economy when you talked about transporting children on a three-county basis in comparison to transporting 75,000 children in the City of Detroit. As I understood your testimony you seemed to suggest it would be more economical if it were done on a three-county basis, is that right?

A. I suggest there are economies of scale over the long term in using that approach. Economies again are relative items and if one is to talk of the initial cost of implementation of a plan as opposed to another plan, as opposed to another plan, those trade-offs are significantly different than the trade-offs that are inherent in a large scale and large based operation across many years.

Those are entirely different propositions and the comparability of those issues are difficult at best.

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[164]...

Q. So it is your testimony that if 300,000 children were to be bused you would need 3000 buses?

A. That would be my feeling, yes, sir.

***

[108]...

Q. (By Mr. Krasicky) Assuming the Court adopts Detroit's metropolitan plan and children in the West Bloomfield school district are bused into the core area of Detroit that I described, would it be natural to send them down the expressway that we both traveled on today?

A. I can't answer that to this extent: The route selection is a function of all the variables we talked about earlier. Certainly one is travel time. I am assuming you are talking about a picked-up group of West Bloomfield students to be brought to downtown Detroit?

Q. Yes, that was what I am assuming.

A. The pick-up would be made and completed in that district and hence the ride to downtown Detroit would be the express portion [169] of that entire trip.

Q. I am talking about from the time they pick up the first youngster until they bring that first youngster along with the fellow students to the school in Detroit; if you can tell us.

A. You are introducing something else. Are you asking me for an estimate of that time?

Q. Yes.

A. Or an estimate of the route that would be selected?

Q. Would it be appropriate to use the expressway to bring them in and can you give us an estimate of the time?

A. The answer is yes that would be one of the appropriate routes to bring students in. Almost any other major arterial, of course, could also be an appropriate route. Part of what I think you are suggesting is what would you naturally select and that typically, unless it is preordained by a route map, is a function of driver judgment as to moving his vehicle along in order to make destination points that he has been assigned in destination times.

Q. Let's assume that route was selected, can you give us an estimate of the time it would take?

A. The route down the John Lodge?

Q. Yes.

A. Just based on my own experience I would estimate – let me ask the time of day that you would expect the movement, during [170] the time when students are moving?

Q. During the usual school hours, yes.

A. That variation "the usual time students are moving" students move in my experience between the hours of 6:30 and 9:00 o'clock which is a rather large span of time relative to the travel characteristics curve of a major freeway. If the students were leaving early in the morning in the so-called pre-peak hours I would estimate that time to be no more than 45 minutes. If they were moving during the peak hour of highest traffic density on the John Lodge, I would estimate that travel time to the rim of the core area that you commended to be an hour.

Q. An hour?

A. Yes.

Q. Would that include the time necessary to pick up the pupils?

A. No, sir. I was talking and addressing myself to your question, just the elapsed travel time on the express portion of the route which did not include the pickup portion.

Q. If the Court were to approve the Detroit metropolitan plan and 300,000 youngsters were bused every day, would such a system be more economical than transporting 75,000 children within the City of Detroit?

A. If by economical you mean total cost of carrying 75,000 students as opposed to total cost of carrying 300,000 students, [171] if you do I suggest that is a rhetorical proposition.

Q. It would not be more economical?

A. If you are suggesting it would cost more to carry more kids I suggest the answer is rhetorical and yes, more buses would be required, more drivers will be required, more gasoline will be consumed and more tire wear and more maintenance and so on and so on, yes, sir.

Q. If there is any economy it's in per pupil cost. If you transport more children you can lower the per pupil cost, is that right?

A. Yes, sir.

Q. As far as dollar outlay is concerned.

A. In absolute dollar amounts there is. The chief difference is whether or not there is a straight line relationship between carrying a smaller amount of students as opposed to carrying a larger amount of students and my comment is that the larger base will provide for a lower unit cost of carriage as opposed to the smaller base.

Q. If there is any economy it's there.

A. Yes, sir, in scale.

Q. Finally, are you aware that the state has reimbursed the Flint school district for transportation of school children who were required to leave the City of Flint to reach their schools?

[172] A. Yes, sir, that is the so-called In-and-Out proposition.

MR. KRASICKY: Thank you.

MR. SACHS: No questions.

THE COURT: Mr. Ritchie.

CROSS EXAMINATION BY MR. RITCHIE:

Q. The last question, Mr. Kuthy – what is the so-called In-and-Out proposition?

A. Well, heretofore the traditional state aid reimbursement and I comment on this not because I am a state aid reimbursement expert but I worked with this material in preparation of the transportation plans I alluded to earlier. The state aid reimbursement formula is exclusively limited to transportation eligible students who live in unincorporated areas. The City of Flint being an incorporated area like a number of other cities and villages in this state is not eligible as a school district, that school district which comprises virtually the City of Flint is not eligible to receive state aid reimbursement for transportation costs. That formula is a complicated formula that essentially produces a 75 per cent reimbursement of the total cost of running transportation for such transportation eligible students.

However, there is a proviso that if students [173] living in a portion of the incorporated area must leave the incorporated area

by the most direct route to get to the school within their school district and go into an unincorporated area and hence back into the incorporated area, so-called In-and-Out.

Apparently the theory is that the residual taint of having moved outside the incorporated area into an unincorporated area attracts the state aid reimbursement. In any event those trips for those students who qualify under the ground rules I specified, the district is eligible to receive reimbursement for those costs only.

Q. You mentioned in Genesee County there is what would you say, approximately 50,000 students being transported?

A. Yes, sir.

Q. To you knowledge how many of those would be transported from one school district into another district?

A. How many are being transported from one school district into another?

Q. Yes.

A. I have no knowledge of the specific number. I would expect it would be a rather nominal amount based on my observation.

Q. But the phenomenon of cross-district busing does exist in Genesee County. You have students being transported form one school district into another?

[174] A. The only thing I am reacting to is the characterization of the phenomenon of cross-district busing. If it is used to functionally describe the movement of students from one district to another as opposed to a more recently acquired parlance I would say yes, there is to that extent cross-district busing in Genesee County.

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[179]...

Q. Just one final question or short series of questions, Mr. Kuthy. You testified you live in the Bloomfield Hills school district. Are you familiar with the location of the Bloomfield Hills Lahser High School?

A. Yes, sir.

Q. Are you familiar with the area of Detroit in the neighborhood of Eight Mile and I-75?

A. Yes, I am.

Q. Would you give us an approximate trip length for that trip as opposed to, under the same circumstances as Mr. Krasicky described.

A. The express time after students were picked up in the area adjacent to Bloomfield Hills Lahser High School to an assumed school destination in the Eight Mile - I 75 area, I would estimate at about 20 minutes.

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[180]...

THE COURT:

Do you have an opinion as to whether the total cost of transportation would be less for a comprehensive metropolitan transportation system encompassing the three counties and the City of Detroit than the present cost of transportation in a tri-county area increased by the cost of transportation by use of a separate transportation system in [181] the City of Detroit?

A. Yes, sir. The two studies that we did advanced the hypothesis that the consolidation of school transportation operation with public transit operations would result in a total public cost reduction, total public cost reduction.

THE COURT: Was that a substantial amount?

A. Yes, sir.

THE COURT: We will suspend the examination of the witness until 2:00 o'clock this afternoon. I think I have something of import to tell you gentlemen at this time before we recess. I gave notice to counsel of a rather tight schedule. There were some complaints about it and, of course, I set a schedule for myself too, maybe that was unfortunate. I said that I expected that I would have a ruling on the several motions for intervention –

You may step down.

(Witness excused)

THE COURT: I am pleased to announce I have kept my part of the schedule and so that you may be aware of what has transpired and what the order in substance contains, the motion of Intervening Defendant Magdowski, et al, to add parties defendant will be continued under advisement pending further proceedings in this case.

The ruling on the motion of the Jefferson-[182] Chalmers Citizens District Council to intervene is continued in accordance with the movant's request.

The motions of Allen Park Public Schools, et al., the Grosse Pointe Public Schools, the School District of the City of Royal Oak and the Southfield Public Schools are granted under Rule 24(a)2, and in the alternative under Rule 24(b)2 under conditions which my ruling specifies in detail.

The motion of Carrie Green, et al., including Tri-County Citizens for Intervention of Federal Court Action No. 35257 is granted under Rule 24(b) 2 under conditions specified.

The intervention of the Tri-County Citizens for Intervention is granted for the following reasons: 1, the standing of the National Association for the Advancement of Colored People was not challenged by the original parties to this action, and 2, for practical purposes the grant of intervention to the Carrie Green, et al., is a grant of intervention to said organization.

The Court has not and does not pass on the procedural propriety of either the standing of the NAACP nor the intervention of the citizens group.

The motion of the City of Warren, a municipal corporation of the State of Michigan, to intervene is denied [183] as of right under Rule 24(a)2 and in the discretion of the Court under Rule 24(b)2.

The motion of Nancy Bird, et al., to intervene is denied under Rule 24(a)2 and under Rule 24(b)2 in the discretion of the Court for the reason that their interests are already adequately represented by the parties, including those to whom intervention has been granted here today.

The motion of Professional Personnel of Van Dyke to intervene is denied under Rule 24(a)2 and in the discretion of the Court under Rule 24(b)2.

The petitioners who have been denied intervention shall have a right to appear as amicus curiae.

I am not going to detail the conditions of intervention.

For the benefit of counsel copies are available, one to each party, not one to each attorney, we don't have that many copies and you may get them from my secretary. I believe she has them available now. When you get them will you kindly have her make a notation so we will save some postal services.

We will be in recess until 2:00 o'clock this afternoon.

(The hearing was adjourned until 2:00 PM)

[184] Detroit, Michigan
Wednesday, March 15, 1972
2:00 o'clock, P.M.

(The hearing of the cause was resumed pursuant to the adjournment.)

THE COURT: You may proceed.

EUGENE W. KUTHY

resumed the stand as a witness herein, and having been previously duly sworn, testified further as follows:

REDIRECT EXAMINATION (Continued) BY MR. BEER:

Q. Mr. Kuthy, I have just one or two questions based on the question the judge asked you just before the recess. You testified, as I recall, that there would be substantial savings in consolidation of all transportation in the metropolitan area, is that correct?

A. Yes, sir.

Q. Would those savings be realized or some of those savings be realized only if school transportation were consolidated and public transportation would not?

A. Yes, they would be based on the work we did in Genesee County and Muskegon and particularly in that latter community. One of the tests or efforts that we were to undertake was to [185] examine the economic, operational, administrative and legal feasibility of consolidating school bus transportation with public mass transportation in those two counties.

The answer came out as to each of those issues. Economically it made more sense because of the cost savings. Administratively it was possible and legally it was feasible and operationally it presented no problems at the conclusion of our study.

Collaterally we also determined that if such a consolidation of public mass transit and school transportation were not accomplished but that exclusively school bus transportation within those counties among the varied districts within the counties were consolidated, the same orders of feasibility were achievable economically, legitimately, operationally, administratively feasible.

As a matter of fact, the cost savings showed up rather dramatically. As I recall in the case of Muskegon County the cost savings were in the neighborhood of some 10 to 20 per cent over the total public cost of transportation in that county.

These cost savings typically occur in the following ways: Instead of each individual school district purchasing its buses as the requirements occur for replacement or for additional bus equipment necessary because of its [186] increased student passenger carriage and paying the highest dollar for the acquisition of that vehicle, the assumption would be that the county–wide purchase of all of the bus requirements for all of the school districts involved would realize savings, we estimate, in the neighborhood of 13 per cent.

That is based on empiric evidence from my own county, Oakland County, where they instituted on a pioneer basis a cooperative bus purchasing plan among some as I recall, 25 cooperating school districts who purchased alone school bus chassis, school bus bodies, not the entire bus. As you know they are bought separately. The cooperative purchase in 1970 of the 25 school districts accumulated by, I don't recall the exact number, I think it was something like 40 school bus bodies came out at a unit cost of $3700 per body.

The average cost in Muskegon County for individual body buys by district was $4425.

Q. Let me interrupt you at that point, Mr. Kuthy. Would these economies of purchasing volume still be realized when you are dealing with very large numbers, for instance, the difference of buying say 750 buses and 1500 buses?

A. I would expect even more dramatic economies, primarily because the intensity of competition among bus manufacturers to secure [187] an order of that size would make a very dramatic impact.

I might add that these economies spread not only across equipment but spare parts and in addition to that there is some very interesting economies in the purchase of insurance which is a very important item particularly in school bus operations.

We were informed after a discussion of a number of insurance brokers that the technique used in the insurance business to sell so-called fleet insurance to bus operators such as the school district is to take into consideration the number of vehicles covered and as the number of vehicle increases the premium decreases, the premium dollars do because there is a volume discount based on vehicle numbers.

In addition to that there is a discount that is incident to the risk pooling. If a particular school district had a particularly bad accident, assuming for a moment that a child were killed or very badly injured or had another accident record of equally bad character, that school district might be paying a very high premium dollar as opposed to another school district that had a better accident record.

The pooling of the risks tends to lower the overall cost of insurance once again based on fleet size.

Q. I have one final question. Using your best professional [188] judgment and assuming optimum cooperation, availability of funds and utilization of equipment how long, in your judgment, would it take t plan, schedule and organize bus transportation of the magnitude suggested for the City of Detroit alone in the plaintiffs' plan?

A. If I may also take the latitude of making assumptions as you have, Mr. Beer, if I could assume concurrence of a number of key activities such as initiation of bus acquisition from the first day that a "go ahead" was given in such a program so that bus acquisition could be pursued independently and concurrently with route preparation and routing and scheduling and planning and if I could assume further that sufficient staff were available and I believe that appears under your hypothesis to begin the site

acquisition, whether it be by purchase or lease or similar activity for maintenance facilities and assume further the staff and the ability to concurrently initiate the administrative requirements such as acquisition of insurance and cadre staff and this kind of thing, with all of those assumptions I would assume it would be possible under the City of Detroit plan to prepare and have a plan available for inspection by appropriate authorities within some five months subsequent to go ahead.

I would assume that in my opinion it would be possible some nine months hence, assuming another four months [189] for operational testing, for driver training, for running of routes and the myriad of detail incident to launching a vast public enterprise to put that system on the air, if you will, within some nine months.

Q. Is there any significant difference in that time between doing what you have just described and doing that for the metropolitan area, making the same assumptions?

A. Not a significant difference. I would estimate perhaps an additional month of effort to prepare the plan and the same kind of time, it would be a little more strain, perhaps three months to operationally debug and test and train drivers and do all those kind of things necessary and incident to an operational beginning some nine months hence from go ahead.

MR. BEER: Thank you, Mr. Kuthy. I have nothing further.

THE COURT: Do you have further questions?

MR. FLANNERY: Briefly, your Honor.

RECROSS EXAMINATION BY MR. FLANNERY:

Q. Mr. Kuthy, do you know the annual perpupil operational expenditures for transportation in the Detroit metropolitan area?

A. Per pupil expenditure of students in the Detroit metropolitan area?

[190] Q. Yes. What is the operational cost, putting aside capital costs, what is the annual dollar figure for pupil transportation, do you know?

A. I can not answer that. I can only answer to some numbers that are most recently available in the Michigan Pupil Transporta-

tion Handbook prepared by the Michigan Department of Education which indicates in a review of the state aid reimbursent act that the approximate per pupil cost,total transportation cost in the 1969–1970 year period was––I can't remember the exact number, I believe $47.92 per pupil, a state–wide figure.

Q. Would you tell me again the source of that?

A. The Michigan Pupil Transportation Handbook prepared by the Michigan Department of Education. I make no claim to expertise in their techniques or derivation of those numbers, I am just reporting what they are.

Q. Thank you. If I understood your testimony earlier, Mr. Kuthy, it was to the effect that the utilization of buses in Genesee and Muskegon ranged from 1.1 per trip to 3.56?

A. Yes, sir.

Q. Do you know what the utilization, comparable utilization data are for other districts in the Detroit metropolitan area?

A. No, sir, I do not.

Q. So that in terms of utilization, if a school district immediately [191] adjacent to Detroit used pupil transportation you are not in a position as I understand it to tell us whether or not such districts are relatively speaking under–utilizing their buses or over–utilizing their buses?

A. Without investigating those numbers it would not be possible for me to do so. The only comment I can make to that is that an attempt was made in both of the studies I referred to to try and determine if there is a single universal operational efficiency index by which you can rate individual school systems relative to one another.

It was the conclusion of my staff that it was not possible with what we knew or perhaps the limits of our own expertise to develop such a single operational efficiency index.

As a consequence of that we used a variety of other indicies to measure operational efficiency: trips per bus, pupils per bus, loading factors, miles per run and a number of other such indicies were used and that was the basis for at least getting, if I can put it, a handle on one district as opposed to another's ability to efficiently handle its student load.

On the aggregate of these indicies or a comparative look at four or five indicies, would at least show the worst case and the best case. The middle grouping of some [192] of these school districts made for a high order of invidious comparison and not terribly reliable within that middle range.

Q. Putting aside legal consideration, if you will, are there any impediments to District A using District B's equipment to transport District A's pupils if District B is adjacent to District A and is substantially under–utilizing its own transportation equipment by the factors you mentioned?

A. I'm sorry, I didn't get that.

Q. Putting aside legal consideration, two districts side by side —

A. Yes.

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[195]...

A. The answer is yes and I think I answered it yes earlier in my conversation because that was one of the findings we made in the Genesee and Muskegon County studies that collaterally, although our central hypothesis was to look for economic, administrative, operational and legal feasibility of consolidation of public and school bus transportation we concurred or recommended that that was so but in additon to that, collaterally we noted that if no such consolidation between public transportation and school bus transportation in the [196] individual districts were made a benefit would flow simply from the consolidation of all of the individual districts, that stood on its own feet. That was not something we sought in the study, it appeared as a result of our efforts.

So the answer again is Yes to your question.

Q. I believe you testified that a certain bulletin put out by the state indicated a cost of $47.92?

A. Yes, sir.

Q. Would that be what the state reimbursed?

A. As I understand it and you will have to accept my reading of the Michigan Pupil Transportation Handbook and I don't recall

the exact page where this formulation was prepared but it specified all transportation eligible students and ineligible students within the state and it gave a formula for working out the total cost of the transportation in the state based on reports submitted by individual school districts and factored by the total number of students who were eligible for such transportation.

It may be at best a modestly understated figure only from the standpoint as I perceive in reading that particular formulation in that only transportation eligible students were factored into the total number of students who were eligible for such transportation.

It may be at best a modestly understated figure only from the standpoint as I perceive in reading that particular formulation in that only transportation eligible students were factored into the total cost of the transportation state-wide, as opposed to all students who were carried by bus which may have included, as I indicated in earlier testimony ineligible students, those students [197] which school districts carry on their own largesse simply because they have the equipment.

Q. I am telling you I am asking you because my recollection is that we were reimbursing more than $7.00 and we are only reimbursing 75 percent of the cost. Could you be mistaken about this figure?

A. I can only testify what I read from an official document from the Michigan Department of Education.

MR. KRASICKY: Thank you.

THE COURT: Any further questions of this witness?

MR. RITCHIE: None from me, your Honor.

THE COURT: You may step down.

(Witness excused)

MR. BEER: At this time the Detroit Board would call Dr. Roger Marz.

ROGER H. MARZ,

was called as a witness by Defendant Detroit Board, and being first duly sworn by the Court testified as follows:

THE COURT: Your full name, sir?

THE WITNESS: Roger Henry Marz.

[198] DIRECT EXAMINATION BY MR. BEER:

Q. Mr. Marz, how are you employed, please?

A. I am a Professor of Political Science at Oakland University.

Q. Do you hold any other consulting positions?

A. I am a visiting professor in graduate studies at Michigan State University, visiting on a parttime basis there. I am an occasional consultant on a regular basis with the Metropolitan Fund which is a regional non–profit research organization focusing on Detroit problems. I consult with them in their Inter–Governmental Relations Division.

I an a consultant on inter–gonvernmental relations and particularly problems of state and local governments to the Systems Evaluation Division of the Office of Emergency Preparedness of the Executive Office of the President of the United States, which is essentially a civil domestic problem version of cost effectiveness, cost benefit analysis in the civil area.

We do work for other governmental agencies. This is more of an in–house think tank.

Q. What is it you taught or teach at Michigan State, Dr. Marz?

A. I was asked to come up there especially to teach a graduate level course in public administration with special emphasis on local and metropolitan problems and a course on the [199] governmental politics of the metropolitan area at a graduate level.

Q. Do you teach any courses relating to metropolitan problems in your regular work at Oakland University?

A. Yes. I teach politics of the local community, metropolitan problems, political, socio–economic aspects of the environment which tends to center around disposal, in my interests, disposal of human wastes and trying to engage in comprehensive planning in metropolitan areas. I teach local government courses, public administration.

Q. Dr. Marz, with regard to the Metropolitan Fund, you characterize it as dealing with Detroit problems, is that right?

A. Yes, it's specifically a Detroit–based organization. Its board of directors include people like vice presidents from the Ford Motor Company ––

Q. What I had reference to, do you mean it focuses only on the City of Detroit?

A. No, it's a Detroit metropolitan area and the Detroit region is the area of concern of the Metropolitan Fund. In fact, its focus is specifically regional problems, problems that reach both within the central city and beyond its boundaries into the metropolitan region.

Q. From what institution and in what field do you hold your doctorate, sir?

[200] A. I have a Doctor of Philosophy in Political Science from Michigan State University.

MR. BEER: Your Honor, at this time the defendant Detroit Board would submit Dr. Marz as an expert on metropolitan government, metropolitan areas and socio–political problems in metropolitan areas with particular reference to the Detroit metropolitan area.

THE COURT: Examination on qualifications?

MR. FLANNERY: No, your Honor.

MR. RITCHIE: None, your Honor.

MR. KRASICKY: No.

(A vita was marked Exhibit C–4 by the reporter)

MR. BEER: I would like at this time to introduce as Exhibit C–4, Dr. Marz vita.

THE COURT: It may be received.

Q. (By Mr. Beer) Dr. Marz, in your professional opinion is there a single most appropriate geographical frame of reference for viewing or studying or solving social, political and economic problems in a metropolitan area?

A. There is a standard base from which I would start if I didn't know what kind of problem you were talking about. There might be some differences depending upon the specific problems but if all other things being equal I would start with the base, the

United States Federal Government Bureau of Census [201] Division of standard metropolitan statistical areas which consist of Wayne, Oakland and Macomb Counties.

Q. With regard to Detroit?

A. With regard to any problem that was perceived as having any implications reaching Detroit or its hinterlands.

Q. You say that is a standard definition, sometimes standards mean arbitrary or artificial. In your professional opinion that is a real definition or viable one or simply an administrative convenience?

A. It was very, very carefully designed. The reason I would use it is not simply because it is conventional but because it is in fact in general a very useful definition. Various agencies of the Federal Government began to recognize in the 1930s that you could not attend to or understand the problems of cities without also being away of the things that went on beyond their immediate political boundaries.

So independently the census of manufacturers and employment people and the labor department and people in the forerunners of housing and urban development, housing and home finance agencies and so on began to develop definitions of what a metropolitan area was and each of them had slightly different definitions so you might find a particular metropolitan area would have one line drawn on it as far as labor was concerned on the map and another line drawn around [202] it as far as the department of manufacturers was concerned. So the drive which culminated in the creation of the standard metropolitan area which was since renamed the Standard Metropolitan Statistical Area in 1950, the drive was to get a definition which caught the essentials as far as all of these agencies and all other users of the census were concerned as best they could.

The essential characteristics of what a metropolitan area was and what it meant, it was very carefully worked out not just by government agencies but also by committees of professional consultants around the county. I wasn't old enough to be a professional consultant then but I am familiar with the work they did. They were very careful.

Q. What are the criteria used in framing this definition?

A. There are several and they are sort of used in order, that is if you don't meet the first criteria then go on and inspect the second one and so on. Would it be convenient to answer that question with particular reference let's say to Detroit?

Q. Yes, that's fine.

A. The first criteria is that there be a central city of at least 50,000 population or a clutch of smaller areas so inextricably welded together they total 50,000 even though there is not any one. Detroit meets that criteria so it will have some kind of standard metropolitan statistical area [203] around it.

The second criteria is that the boundaries of the SMSA will be county boundaries. This is for administrative purposes largely because the Federal Government works well that way and because most other agencies want to have some kind of standardized boundary. There is an exception to this made in New England where counties do not exist, there the boundaries are town and city, township boundaries.

The second criteria after you define it is a central city and either a county or county surrounding it, is that it be of metropolitan character. The population of this area ceases where the metropolitan character of the area ceases. There is a very careful definition of what that means.

The definition of metropolitan character is that there has to be an unbroken chain of minor civil divisions. If we went out Woodward the minor civil divisions would be say, Ferndale, Royal Oak, Birmingham, Bloomfield Hills, Bloomfield Township, Pontiac, Waterford Township, Pontiac Township, et cetera, each of these divisions must have a population density of at least 150 persons per square mile.

When you get to a minor civil division along a line that has a population density of less than that then that signals the beginning of the end of the metropolitan area. The metropolitan area will end at the end of the county that [204] contains the last of those minor civil divisions.

A population density of 150 square miles was chosen as a rather conservative definition of a population that sustains an

urban life still. For example, in a rural area the old township areas you typically had 160 acre farms. There would be four of those to a square mile. If a farm family had 10 people on it then a rural population density would be about 40 per square mile.

Just to be on the safe side and not to have metropolitan areas that spread arbitrarily across the landscape like ink spilled out of a pot, they picked a figure for determining when urban density stops at about four times that density.

The last criteria is that even if you got this metropolitan density that the county should form a social and economically integrated community with the county forming the central city and then there are a whole string of contingent criteria which are used to determine whether or not this is the case. The prime criteria is the occupation, the place of occupation of the labor force.

Q. Now let's if we may go into a bit more detail on the quality of metropolitan communities. Could you list specifically what the criteria is with regard to work force and also state some of the other criteria?

[205] A. Yes, I can. May I read from this.

Q. You may if you tell me what it is.

A. It's from the User's Guide of the 1960 United States Census and it tells you what the criteria are. I xeroded it off because of my memory is not that great. It's one of these things that you are supposed to know but you usually end up looking up before every lecture; at least I do.

Q. Go ahead.

A. The criteria of metropolitan character, I have already described it. Let me go to criteria of integration. A county is regarded as integrated with the county or counties containing the central cities of the area if either of the following criteria is met. The first criteria is that 15 per cent of the workers living in the county – we are now talking about an outlying county like Oakland – 15 per cent of the workers living in that county work in the county or counties containing the central city or cities of the area.

So it's the percentage, if 15 per cent of the workers living in Oakland County were to work in Wayne County it would be defined as meeting this criteria, being socially and economically in-

tegrated with Wayne County and, therefore, by inference with its central city. The same test would be applied to Macomb and to Washtenaw.

In fact, Oakland County in the 1960 census, [206] 33.8 per cent of the workers in all walks of life living in Oakland County were employed in Wayne County.

Q. One-third of the work force and this was in 1960?

A. Yes, one-third of the work force in 1960.

Q. All right.

A. In Macomb County the other counties or county which forms the standard metropolitan statistical area with Wayne and Oakland, in Macomb County, 44.2 per cent of the work force were employed, people who lived in Macomb County and were in the labor force worked in Wayne County. That is the prime criteria, that is the one that the census looks at first in order to determine the boundaries of an area.

There is a backup criteria and I did not bother to calculate the statistics on this one. I know that Oakland and Macomb County met it but I don't have the exact numbers. They have to be extracted from the census.

Q. Tell us what the criteria is, please.

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[208]...

Q. By "our school" I suppose you mean Oakland University?

A. Yes I'm possessive about that, I forget.

Q. We have some schools too.

A. Yes, I'm sorry about that. There is one in Ann Arbor but I keep forgetting its name. As a political scientist I tend to look at governmental institutions as indicaters of a recognition of the existence of a metropolitan area. In other words, has there been some kind of public or political legal collective judgment that you should meet some governmental problem on a metropolitan basis and I can think in the Detroit metropolitan area right offhand of three such examples of such regional governmental institutions.

Q. What are they?

A. The Huron-Clinton Metropolitan Authority is the oldest. It was founded by the state in 1939 and it was a direct recognition of the fact that no one community nor indeed any one [209] county in the state could provide adequate recreational, educational and cultural facilities and they were also chartered to provide transportation facilities to get to those, out of its own resources, within its own limits.

So the Huron-Clinton Metropolitan Authority was deliberately chartered to meet a regional need of the metropolitan area.

A second, also created by the state legislature, is the Southeast Michigan Transit Authority. That has a lot of power. I have the impression it has not very much money but a lot of authority to get the net collective transportation needs of the southeast Michigan region.

The third is an interesting one because it was never imposed from without but grew and evolved very naturally from within and in fact it makes Detroit one of the envies of other metropolitan areas throughout the county and that is the Detroit Metropolitan Water and Sewer System.

Through supply contracts, through mutual bonding, through agreements reached in the tightest kind of bargaining but all controlled largely by the perception of a collective interest of all of the parties the Detroit metropolitan area is literally knit together by webs of steel pipe and concrete sewer pipe such with so many overlapping responsibilities, so many overlapping jurisdictions and physical [210] responsibilities that you couldn't disaggregate this into a separate community if you wanted to.

There is literally no way to pull the metropolitan region apart with respect to water and sewage supply. It's integrated. It will always be integrated even if we would like to pretend that it is not, we couldn't. We owe each other bills. We have collective responsibilities for bond issues. It's really quite a remarkable system.

Q. You say this simply happened as a manifestation of needs as recognized by discreet entities within that area?

A. Yes, they bargained with one another, reached mutually agreeable contract; Detroit found it was efficient to sell water to suburban communities. The suburban communities found it was

more efficient to buy from Detroit and share with Detroit in increasing its capacities. The same was true in sewage disposal systems.

Not every community in the three – I guess about four or five county region now belongs to it but by far the bulk of them do and most of them do so because it is, frankly, in their interests to belong. It is the best way to solve a problem on a metropolitan basis and you didn't need a state law, you didn't need directive action. It was perceived by the local people themselves that this was the best way to do it.

Q. I see.

A. [211] It's very pervasive.

Q. Dr. Marz, I seem to have a blind spot today about planning commissions. I believe I neglected to mention you are, as I recall, a member of the Oakland County Planning Commission?

A. I am a member and secretary of the Oakland County Planning Commission.

Q. What is the particular function of that commission?

A. It's to give policy, direction, and supervision to the planning staff of the County of Oakland, to consider the needs of Oakland County in planning in the fields of transportation, open space, land use, local governmental structures and the like and to coordinate our activities as best we can with the constituent local bodies within Oakland County and the other relevant local bodies whose decision outside impinge on Oakland County.

Q. Dr. Marz, in terms of both your professional opinion and your judgement, as you exercise it as a member and officer of that body, is it conceivable to you that those planning functions could be performed without consideration of the City of Detroit or the geographic area it represents?

A. No.

Q. I didn't hear you?

A. No, it's not conceivable to me. It is indeed inconceivable. We are part of the Detroit metropolitan area and we have to make [212] our plans accordingly.

Q. Dr. Marz, do you have a professional opinion as to whether the concept of metropolitan community, which you have explained and delineated in your testimony exists as a subjective perception of the people who live within that metropolitan community?

A. Yes, I do. In the proper context if you go up to somebody cold and and ask him,"Are you a member of the Detroit metropolitan community?" The response will probably be "Huh?" That is, people tend to be aware of the fact that they live in Bloomfield Township although that sometimes won't do them very much good because if they live in Bloomfield Township they might still live in any one of five school districts which serve Bloomfield Township.

To get a sense of a community in a metropolitan area like Detroit it is very tough to do on a local basis because there are so many overlapping jurisdictions, but I think the test of whether a person has such a sense of community comes in the question of how he acts when his metropolitan area is indeed what is relevant and what I do in school when I am trying to get this idea across, is if you are in another part of the country or if you are in a foreign country and you are trying to tell somebody where you are from, how do you do it? You say you are from Detroit or you say you are from [213] Detroit and its environs and it is in that sense that the sense of a metropolitan area is very real and that is the sense that it is relevant.

That is the sense in which it is relevant as compared to other metropolitan areas. It doesn't preclude you knowing the fact that you live in Bloomfield Township means you don't live in Birmingham. You can have lots of senses of community and they nest but I would say the metropolitan sense is a real one too in its proper context, just as real.

MR. BEER: Thank you very much. I have nothing further, your Honor.

MR. FLANNERY: Nothing, your Honor.

CROSS EXAMINATION BY MR. KRASICKY:

Q. The concept of a metropolitan area in essense is a convenience for the Federal Government, is it not?

A. No, sir, I would say not. I would say it is an essential necessity for anybody who wants to think about any kind of an urban problem. What was convenient for the Federal Government and for everybody else working on urban problems was to develop a set of criteria so that everybody would be using the concept in the same way but they didn't invent the concept [214] for their convenience. The concept was invented kind of independently over and over again by all kinds of people who wanted to look at urban problems.

Q. But your basic definition of the metropolitan area is the Federal Government's definition, is it not?

A. Yes, sir, because that is the one that has become the conventional one to be used by all professional workers in the field. It's one you may depart from on certain occasions but you depart from it knowing that there is a conventional definition and it is there for a reason.

Q. Are you familiar at all with the area that is known as Armada, Michigan?

A. Armada? Yes, sir, I know where it is.

Q. Do you think that the people in Armada perceive they are part of Detroit in any sense?

A. I would answer that question I guess the way I answered it with Mr. Beer. In the proper context I am sure they do. If a person from Armada were in Puerto Rico and somebody asked him where he was from I think he would say he was from the Detroit metropolitan area. I can't prove it.

Q. You think he would?

A. I think he would, yes. I use this definition in my classes over and over again and I find that it is readily recognized as an appropriate definition.

[215] Q. Is it possible that he might say either from Mt. Clemens –

A. I beg your pardon?

Q. Is it possible he might say he is from Mt. Clemens?

A. Is is possible?

Q. Yes.

A. Yes, sir, it's possible.

Q. You described certain governmental institutions such as the Huron-Clinton Authority?

A. Yes, sir.

Q. That is composed of more than three counties?

A. O, yes, sir.

Q. How many counties?

A. Five, I believe.

Q. Isn't that the true metropolitan area those five counties?

A. No, sir, I don't think there is a true metropolitan area. Mr. Beer's question to me was all other things being equal what would I consider a metropolitan area. At least that is how I interpreted it and like any other professional in the field all other things being equal I consider it Oakland, Wayne and Macomb Counties. I suggested that professionals in the field will depart from the standard definition which is an extremely conservative one. If they have a particular deliberate purpose for doing so.

I think it is significant to note that the [216] direction of departure, conventional in the literature over the last 15 years or so, has been to expand the concept of the metropolitan area beyond the very conservative Federal Government definition. The Huron-Clinton Metropolitan Authority would be an example of an expanded perception of the metropolitan region.

Q. Can you name the other two counties that are members of that Authority?

A. I believe it is Washtenaw and Livingston.

Q. Why isn't Washtenaw considered part of the Detroit metropolitan area?

A. By the Federal Government?

Q. Not the Federal Government, by authorities,by people who are knowledgeable in this field.

A. People who are – I guess I don't understand.

Q. Do you consider Washtenaw to be part of the Detroit metropolitan area?

A. For what purpose?

Q. For the purpose of a person in Ann Arbor traveling in Europe saying, "I'm from Detroit" if asked.

A. I am reasonably sure of that.

Q. That is what they would say?

A. Yes, sir.

Q. What counties belong to the Sountheastern Michigan Transit [217] Authority, do you know?

A. I don't believe I know.

Q. Is it more than the three?

A. I honestly do not know the answer. I know it is a least the three but I do not know the answer.

Q. Does the Detroit metropolitan water system deliver water to any communities in Genesee County?

A. Yes, sir.

Q. Can you venture an opinion as to what someone from Flint might tell somebody while traveling in Europe where he is from?

A. I suspect a person from Flint would define himself as being from Flint.

Q. Not from Detroit?

A. No, sir. It's interesting, the Federal Government's definition thinks that too because Flint is a standard metropolitan statistical area; Flint is the center of a standard metropolitan statistical area which is composed of Genesee County.

Q. You define perception as being part of the Detroit metropolitan area in the proper context and you use the example of the traveler in Europe.

A. Yes, sir.

Q. Can you give us any other examples?

A. Beg your pardon?

Q. Can you give us any other examples of this perception which you [218] speak of?

A. I guess not. That is what it means.

MR. KRASICKY: Thank you.

THE COURT: Other cross examination?

MR. SACHS: No questions.

MR. RITCHIE: No questions, your Honor.

MR. BEER: I have nothing further, your Honer.

THE COURT: Let me ask you this question, Professor. Do you take into account in exploring this subject the perception of outsiders?

A. In a sense that is exactly what controls the perception of a person in another area. That is when he is trying to explain to somebody where he is from, he responds to what he thinks they know about the region so he centers on the important aspects of the region and develops his definition of himself for somebody in those terms so that somebody who comes from an area whose socio-economic life is centered on Detroit will name Detroit because he knows that the outsider perceives Detroit but perhaps does not perceive Pleasant Ridge or Warren or something else as a separate entity.

When he is talking with somebody who is a near-outsider he can make finer distinctions.

THE COURT: I would expect that you would say that the farther removed the stranger is the larger the [219] community becomes.

A. I'm sure that is true.

THE COURT: I'm reminded of an experience overseas during the war when an Italian asked me if I know his brother because he said he lived right in Chicago. Unforunately I didn't know him.

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BETTY RITZENHEIN,

was called as a witness herein by Defendant Detroit Board, and being first duly sworn by the Court, testified as follows:

THE COURT: What is your name, ma'am?

THE WITNESS: Betty Ritzenhein.

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[222]...

Q. Would you state your name for the record, please?

A. Betty Ritzenhein.

Q. Am I correct it is Dr. Ritzenhein?

A. That's correct.

Q. Speak a little louder so I can hear you.

A. Yes, sir.

Q. Your received a Doctor of Education, is that correct?

A. That's correct.

Q. In 1963?

A. Correct.

Q. And from what institution?

A. Wayne State University.

Q. Could you tell the Court, if you would, please, what you received the doctorate in?

A. Curriculum development, that was the major, with minors in [223] Psychology and Sociology.

Q. Dr. Ritzenhein, you also hold a Master of Science degree, is that correct?

A. That's correct.

Q. From what institution?

A. Wayne State University.

Q. In what fields?

A. Curriculum Development, Administration, Supervision of Curriculum.

Q. Am I correct you received your Bachelor of Science in Education in 1942 from Wayne State University?

A. Yes, sir.

Q. Is it also correct that you are a graduate of the Detroit public schools?

A. That's correct.

Q. All of your education was in the Detroit public schools?

A. Yes, sir.

Q. You are employed by the Detroit system now, is that correct?

A. Yes, sir.

Q. How long have you been so employed?

A. Thirty years.

Q. Could you list for the Court if you would some of the positions that you have held?

A. I was appointed as a probationary teacher at the Lingemann [224] School in February of 1942. I was promoted to a teaching assistant principalship at the Monteith School in 1950; to Administrative Assistant Principal at the Carstens School in 1955; to a principalship at the Crosman School in 1960. I was laterally transferred to the Herman School in 1965, and last September I was appointed the Principal of the Region 3 Magnet Middle School.

Q. That is the position you now hold?

A. Yes, sir.

Q. In regard to the position that you now hold was this a position that you were asked to assume or is this the position you volunteered for?

A. I was invited to accept the responsibility and was named the administrator on March 15, 1971, and from that time to May, I was still the principal at the Herman School, was released from my responsibilities at Herman on the 6th of May, a year ago this spring, to begin the formulation of the initial proposals and the program for the middle school which was opened the following September, this last September.

Q. I want to make it very clear on this record, you state you were invited?

A. Yes, sir.

Q. Would you tell the Court just what that means.

A. The principals in each region with the decision to develop the [225] magnet school programs were asked to submit an

application if they would like to take the job. At that time we were in the process of formulating a program at the Herman School which was funded under Section 3, $249,000 worth of program and I was reluctant to make application for anything until we had expended that money and formulated a creative program at the Herman School.

On request of our region superintendent – that I would consider the invitation – and given sufficient time to complete the one operation I did submit a letter stating under certain circumstances I would accept such a position.

MR. ROUMELL: For the record I would like to have Dr. Ritzenhein's biography marked.

(A biography of Dr. Ritzenhein was marked Exhibit C-8, by the reporter)

MR. ROUMELL: Her biography is marked as C-8, may I have it received?

MR. FLANNERY: No objection, your Honor.

MR. KRASICKY: No objection.

MR. RITCHIE: No objection.

THE COURT: It may be received.

Q. Dr. Ritzenhein, could you tell the Court where Region 3 is?

A. Region 3 Middle School is located as geographically in the center of all of Region 3 as it could possibly be. I presume [226] this is why the George Ford School was named as the Region 3 school. We do not refer to it at the present time as the George Ford Middle School because we have the kindergarten through Grade 4 still on our campus. We refer to it as the Region 3 Middle School, pending relocation, perhaps other housing and then resume identity with a name.

Q. Region 3 is one of the eight regions constituting the school district of Detroit?

A. This is correct.

Q. You have your own board of education plus your own superintendent?

A. Right.

Q. In relation to Detroit geographically where is Region 3 located?

A. Region 3 is bounded on the extreme west by the Rouge and you can see it has sort of, it's difficult to say which particular line draws through it but Fullerton roughly on the north, it borders Dearborn on the south and then gets over to Dexter Boulevard in some curious way but I am not quite sure how it got there.

MR. ROUMELL: Let the record show the witness is pointing to what had previously been marked as C-1 and is on the board.

A. For other geographical reference the school itself is a few [227] blocks east of Greenfield, one block north of Chicago Boulevard, two blocks south of Plymouth and a block west of Hubbell.

Q. Dr. Ritzenhein, in Region 3, are there schools that are predominantly white schools?

A. Yes, sir.

Q. Are there schools that have more than 70 per cent black?

A. Yes, sir.

Q. In your region?

A. Yes, sir.

Q. I believe you mentioned in May of 1971 you accepted an invitation to develop the Region 3 school?

A. On March 15, I was named the administrator. I accepted the position on March 13, and was named at the board meeting on the 15th. I was given until the end of April to complete the programming that had been started at the Herman School. I was released from the Herman School on May 6, to begin the operation for the middle school.

Q. Would you tell the Court, please, exactly what you did beginning on May 6, in terms of developing the Region 3 middle magnet school?

A. We began prior to May 6, to, with an understanding that May 6, being a Monday, it's always a very good day to start doing something but prior to that we worked through our entire spring vacation period which was in April of that year to [228] formulate plans that we would present to our region board, they would be returned to us, these were largely curriculum in nature, end goals, products, the direction in which the magnet program would take, what our end product of such a school program would be, what innovative measures would be taken. We began the process of description of staff and staffing for the school and all of this before the school was named or the site located.

Q. Dr. Ritzenhein, I take it that the development of the magnet middle school was done under your direction?

A. Yes, sir.

Q. In terms of obtaining students for the school did you engage in a recruitment program?

A. It was not a recruitman program as such. It was more of an interpretive program. A program to interpret some of the aims, goals, designs of the curriculum.

Q. What did you do?

A. We were contacted by parents groups and we made the church meetings on Sundays and held open house on Sundays, went to a variety of schools in our region to give publicity to the fact that this was something new, something different, something creative and something that would be of a high quality for our young people.

Q. In other words, would it be fair to say, Dr. Ritzenhein, what [229] you and your staff did was go out and tell the community about the magnet middle schools?

A. That would be correct.

Q. Your community was the community known as Region 3?

A. Yes, sir.

Q. It has about 35,000 school children in it?

A. That's correct.

Q. Did you accept applications then from students to attend Region 3?

A. The application process was from the Central magnet school office. The applications were designed by the Central magnet school office. The applications were distributed to each school in the City of Detroit and I will speak for Region 3 only at this point. The applications were sent to the schools where parents could pick them up and return them to the region office where upon arrival, upon receipt, they were stamped with a number 1,2, on up, and the date of arrival.

Upon the collection of these applications at the region office I was there almost daily picking them up, arranging them in some kind of order and following the receipt of applications it became apparent to us quite early that the number of places we had for young people was quickly diminished and so the region superintendent and staff decided on the 4th of June that they would accept no more applications.

In a school [230] that would house and could physically house approximately 400 to 450 youngsters we had already had in receipt over 800 applications.

Q. Were these applications from both black and white students?

A. Yes, sir.

Q. Dr. Ritzenhein, after you got the 800 applications did you and your staff do any interviewing?

A. The problem of deciding how the youngsters were to be assigned to the school reached some very critical stages. No. 1, if we took everyone numerically as they arrived at the region office we would be discriminating against those youngsters whose parents wanted to apply early but the school was out of applications and, consequently, came in late.

We decided then that we would establish as nearly as possible the quota of the number of youngsters by Grade 5, 6, 7 and so on.

Q. When you said "quota" what did you mean?

A. By taking a larger percentage of the younger youngsters over a four-year period of time within a program their evaluation would be more statistically significant than taking a few number of youngsters at the eighth grade level because they would be with us for a very short period of time; taking only those youngsters at the upper level by grade whose younger siblings were accepted into the program for the adjustment [231] during the first year or so. The quota also was based on sex. You couldn't put all boys in the school or all girls, nor could you have more boys in the sixth grade and all girls in the seventh grade, so it was established we would try to select those youngsters by race, by sex and by grade to get an even balance to the school.

Q. I want to ask you about race. What was the aim established in terms of race?

A. We tried to establish the balance at 50 per cent black and 50 per cent white.

Q. At the present time how many students do you have in the Region 3 middle school?

A. 400. I haven't been there in two days.

Q. Well, racially what is the percentage of black and what is the percentage of white?

A. 50 per cent black and 50 per cent white. It's within .4 of 1 per cent of being precisely racially balanced.

Q. Dr. Ritzenhein, did you interview any potential pupils for the school?

A. We had several other things happen prior to the interviewing process. We had letters from psychologists, from psychiatrists, from school social workers, school administrators, from ministers within the basic parish, priests and so forth, who made strong appeals for certain youngsters to be placed. [232] in the school based on either a very poor previous school record, a history of truancy, a history of grade failure, a history of perhaps poor school adjustment; I know we received youngsters from Hawthorne Center for the Emotionally Disturbed whose director specifically stated to return the youngster to the school where the

instructional damage syndrome had really done something to mold the kid in that his chance for school success was greater in the environment of the new setting of the middle school.

Upon receipt of those letters certain notes were made on the youngsters application forms and then in June before school closing I visited several of the elementary schools having notified the administrators in advance, having the parents of those youngsters who made application at the school be interviewed at the school.

Q. You interviewed the parents and the child?

A. Yes, the child was not seen without the parents. During the summer those interviews not completed during the school year were completed during July and August. All fifth, sixth and seventh grade applicants were interviewed. The eighth grade applicants were not, having previously stated they only were invited to come to the school upon their application if a younger sibling were there.

The interview process did several things. It [233] made the school, No. 1, a very, very important and impressive kind of place to be because a parent had never been interviewed in a Detroit public school before about the youngsters assignment to the school.

Another thing that was significant: youngsters do not normally make application to go to a Detroit public school. This put us in a separate class, let's say, temporarily. The interviewers were to determine the degree of interest the child had or lack of interest, the degree of interest on the part of the parent, an explanation on the part of the parent about the kind of problem the youngster had, what kind of interest the child had in terms of his schooling and another significant question, there were two final significant questions, one had to do with how do you feel about the reporting system in the Detroit public schools. I refer to the "report card syndrome" and the feeling that the youngster and parent had toward the integrative prospect of the program, remembering that the middle school had the two-fold thrust, one was for quality education and one was for the integration experience for children.

Q. You used the word "integration" would you call it desegregation?

A. Desegregation – I use them interchangeably.

Q. Now in the program that you described in going to the community, [234] to the churches, the open houses and so forth in your community, you described the northwestern section of Detroit; was there any statement made to the public that this would be an integrated procedure?

A. Yes.

Q. The children that you had taken into the school you indicated how many different schools did they come from?

A. 36 schools, all within the region with the exception of the application from a family whose youngster was attending the Friends School which is a school separate and apart from the Detroit public school system.

Q. That is a private school?

A. Yes.

Q. That family lived in the region?

A. Right.

Q. The school I believe you described had the fifth, sixth, seventh and eighth grade?

A. Yes.

Q. The elementary schools in your district go up to what grade?

A. K through 6 in most cases. There are some exceptional cases where they do have some seventh grade.

Q. Prior to the opening of the magnet middle school did you have elementary schools in your region that were all white?

A. Yes.

Q. [235] Did you have any applicants from these all white elementary schools, fifth and sixth graders and I assume fourth graders to the Region 3 middle school?

A. Yes, sir.

Q. Were these applicants accepted or were any of them accepted?

A. Most of them were accepted. There was a case, however,

during interview where the youngsters from an all white school had had a very poor history of past school experiences and their parents said, "We are making this application for you" and the kid said, "We want no part of it." At the interview then we though – you can't help a youngster until you get their attention. It might take a little time. Subsequent to the opening of school very strangely enough both youngsters were on the verge of some kind of school suspension and the family made an alternate plea.

At the time the youngsters attention was now sufficiently obtained the youngsters are in the school and just most recently and these are two very distrubed and damaged youngsters – last Sunday afternoon at a meeting of our parent group the mother said, "What have you done to my withdrawn child? Isn't there an 'Off' button now"?

Q. Dr. Ritzenhein, then you are stating to me that in your region there were white children and white parents willing to come from an all white situation into a 50-50 situation?

A. [236] Yes.

Q. Did you have black students come from let's say a 90 per cent black elementary school to your school?

A. Yes, sir.

Q. You had applications from black students?

A. Yes.

Q. Were many of them accepted?

A. As many as could be accommodated within our program.

Q. Did you have black students come from schools in your region that had 10 per cent black and wanted to come to your school?

A. Yes. When you talk about 10 per cent black, we have two schools in the extreme west boundary of our region that are all white within their neighborhood and are integrated to that 10 per cent by some busing of black children to relieve overcrowding at the eastern end of our region, so you would classify that then within the 10 per cent? Under those circumstances, yes.

Q. Then we have white students coming from all white schools; we have black students coming from all black schools and

we have black students coming from schools where they were in a small minority.

A. Right.

Q. Could you tell the Court, if you would, please, the types of programs that you are operating in the Region 3 school.

[237] A. How much time have we got?

Q. Not too much but will you give a couple examples.

A. Our program –

THE COURT: I am reminded of an occasion when I had a golf date at 1:00 o'clock. We were running summer hours– this was not while I was on the Federal bench, it was another bench. Some high-powered attorneys presented a difficult problem which I solved before they rose and it was about five minutes to 1:00. Of course as you will notice about this courtroom the clock is always in the wrong place. It's not placed so that the attorneys can see it, it's always placed so the judge can see it.

We were supposed to recess at 1:00 and it was five to 1:00 and I was due on the tee at that time by prior commitment. I said to counsel, "I assume you don't want to argue, you waive argument?" One lawyer said he would and the other fellow said he would like to argue it. I said, "Well, you go ahead and argue it and take all the time you want so long as you finish by 1:00 o'clock."

So –

Q. Give us one example.

A. I believe it's a fact that one of the features of our program is youngsters have the opportunity to select, to build their own programs and to make choices about their school day, to [238] have input into what happens to them on the educational setting and to the point of where they might select the things of the greatest interest to them, that they are not bound by a time period in the completion of a project and that there is nothing sacred about a bell ringing every 40 or 45 minutes.

Q. Dr. Ritzenhein, the program has been operating since the opening of school, that is obvious.

A. Yes.

Q. What type of response have you received from the parents

during this time about the program?

A. We have had an overwhelmingly favorable response. When new programs open there is generally some apprehension on the part of everybody. We experienced the same apprehension. It was quickly dissipated however with the smooth arrival of our buses, the smooth transportation of our youngsters, there was a concern of parents especially the parents in the far north area and west area traveling toward predominantly the black end of our community. There was apprehension on the part of these parents.

This was very rapidly dissipated. The parents who used to follow the buses in their cars just to be certain the kids arrived on time – within a week, no more. It wasn't necessary. Then when the youngsters started to talk more and more about their school, you know the old cliche, a [239] youngster comes home from school and mother says, "What did you do today?" and the kid says, "Nothing" but the kid has been gone for six hours and obviously something had to happen. We heard none of that. Our parents have reported that the youngsters have been extremely responsive, are dragging their parents all over the city to dig up things they need for their school program and so forth.

Q. You do have PTA meetings?

A. We have school community council.

Q. What type of response have you got to meetings of your school community council?

A. We introduced to the school community council the fact we would have parent workshops to help devise the new reporting system that would be used for our youngsters. We had more responses from parents who wanted to be part of an all day Saturday workshop than we could accommodate.

That is an example.

Q. Are these interracial groups?

A. Yes, they are.

Q. In your observation in the five or six months that you have had the program are children of both races mixing?

A. Yes, they are.

Q. Are they doing projects together?

A. Yes, they are.

Q. [240] Dr. Ritzenhein, do you believe that this particular program had desegregated –

A. For the youngsters I speak for, Region 3, it has been an excellent example of desegregation, an excellent example of children playing in string quartets together and in concert bands, glee clubs, working on projects and basketball teams and the cheer leaders. The total experience of our youngsters always appear to end up just representative of the population of our school.

Q. Do you believe, Dr. Ritzenhein, that this program as it now operates can desegregate the entire system?

A. No, sir.

Q. Why?

A. The ingredients are not present in the City of Detroit to make for meaningful desegregation for the total City of Detroit.

Q. When you say the ingredients, will you tell the Court what you mean by the ingredients.

A. The numbers of our young people of each race.

Q. Do you believe that a plan that puts 65 per cent black children and 35 per cent white children in each school would desegregate Detroit?

A. It would not.

Q. Why?

A. It would result in a resegregated situation. My administrative [241] experience in the past has been and I will use the Herman School as a base statistic. I came to the Herman School in 1960. It was 11 per cent black. Now in the intervening years as the race change came into the community, when it came past the point of tipping the balance then we found that the per cent then continued to escalate for the black students and de-escalate for the white students. I understand from the present administratory now – this has to go back to when I left in May – that the school population now is approximately 60 per cent black.

Q. You used the word "tipping the balance" what do you believe was the tipping?

A. I think that when you go through a resegregation cycle for a while a school is desegregated because there are white children

still on the campus and as the black population escalates we find that there is a rapid de-escalation of the white population. So it reaches a point somewhere between 50 per cent and 55 per cent. I think it's going to vary depending upon the community. It will be more rapid in some communities and a little slower in others.

Q. Dr. Ritzenhein, referring to this magnet middle school, the Region 3 magnet middle school, has that school adopted a visitation program with a middle school outside of the City of Detroit?

[242] A. In our attempt to broaden our youngsters horizons we began some correspondence, not just with the city, I won't go outside of the city, just for communication purposes, we also communicated with the West Bloomfield middle school. We had seen pictures of the new high school in our Sunday magazines in the News and so forth.

Q. And the Free Press?

A. Or the Free Press, was it?

Q. In both papers.

A. It was in both papers. I will be kind to say I did not see it in the Christian Science Journal. The eighth grade history class and one of our city classes corresponded. They were interested in the eighth grade West Bloomfield eighth grade history class; they were interested in exploring the busing situation, integration or desegregation or as it existed in Detroit, what were the youngsters feeling being in a middle school and how was the process of desegregation affecting them.

Q. Let me make clear for the record the West Bloomfield middle school is in the West Bloomfield school district?

A. Yes.

Q. Fine. What did you do?

A. We invited them. We thought the firsthand experience, primary experiences are much better than secondary experience, which is correspondence. A couple carloads of youngsters came to [243] visit our school. They were at our school for, from about 8:30 for a little briefing session prior to our start of our original session at quarter to 9:00. We selected a group of our eighth grade youngsters to be their escorts, their pals as it were for the day through the noonhour and until dismissal when the group left. We

continued our correspondence and were invited out to the West Bloomfield area to meet the same friends that had been established.

Our plans call now for continuing our exchange visits through the rest of this spring. One of the suggestions made is that we start with the younger group of youngsters next year instead of the eighth grade so they would have a longer period of time, a four-year block of time for better acquaintanceship, a better sharing experience and perhaps eventually some other kind of relationships, I don't know.

Q. Dr. Ritzenhein, the group that you took out to the Bloomfield, West Bloomfield middle school was that a racially mixed school?

A. It was representative of our school.

Q. 50-50?

A. Right.

Q. Just out of curiosity do you recall how long it took, transportationwise, how long it took the children to get out to West Bloomfield school?

[244] A. Being pilot and also navigator of one of the cars I ought to tell you something. I got lost only once myself, going past a turn which meant coming back, getting back on the freeway and getting back down to make the turn. It was about a 25 minute ride from West Bloomfield from school.

Q. A 25 minute ride and you were lost?

A. Yes, sir.

Q. Dr. Ritzenhein, do you have any idea how far the West Bloomfield middle school was from your school?

A. Unfortunately I did not check the mileage.

Q. Dr. Ritzenhein –

THE COURT: You use the term middle school as applied to the West Bloomfield school. Am I going to give it the same meaning as the middle school in Region 3?

MR. ROUMELL: I will let Dr. Ritzenhein answer that.

A. West Bloomfield is going toward the direction of middle schools and this is the new West Bloomfield middle school encompassing the same grades that we encompass in our regions in

Detroit.

THE COURT: It has the same type of approach to education?

A. Their approach is a little different. You see, just being a middle school is encompassing younger kids 10 to 14 is one [245] part of the program. They are unique in that they have a brand new plant designed for large group assemblies and so forth. We made do with much less. There are parts of their program without going into too many details that our youngsters thought were a little stale.

There is a little more electricity in the Region 3 middle school because they are sort of an electric bunch of eels – real good kids.

Q. Dr. Ritzenhein, you indicated, I believe, in response to my question that you believe there are limitations on the magnet plan and desegregation fo the school system of the City of Detroit. You also indicated you did not believe a 65-35 plan would desegregate the City of Detroit. What plan do you believe as an educator and person who spent 30 years of your life in the Detroit system, could do an effective desegregation job?

A. The only plan I can see ultimately would be the metropolitan plan.

Q. Do you believe or would you favor the institution of an interim plan between the magnet plan and the metropolitan plan?

A. An interim plan would tend to –

MR. FLANNERY: May it please the Court – excuse me, Doctor. Your Honor, the doctor has neither been offered nor accepted as an expert witness. I certainly have [246] no quarrel with testimony based on her personal experience nor I think to some extent with some of the projections that have been made but I don't think Dr. Ritzenhein represents herself as an expert on the relative merits of competing desegregation plans in general nor has she been so tendereed so I would object to such conclusiory testimony.

MR. ROUMELL: Well, your Honor, I have always believed that a person who is in the field of educating youngsters, who is there on the front line, particularly one as well qualified as Dr. Ritzenhein who has had the extensive experience teaching both

black and white children in the area we are talking about and who is not just an outside expert with theories –

THE COURT: I think I am leaning favorably to your side unless you argue me out of it.

MR. ROUMELL: I won't. I'll shut up. I know it's not golf weather yet but –

THE COURT: It reminds me of another instance where we had a condemnation proceeding for the municipal center for the City of Flint. A matter of perhaps 150 parcels were taken care of by agreement of the parties with respect to value and about 17 parcels were left for determination by the jury. We respect to one of the parcels, two or three high-powered appraisers who said they had taken correspondence [247] courses in appraisals and also attended so-called seminars, which I think were conventions, were over on one side and on the other side one of the best lawyers in this state offered as his witness a man from the field who had been buying and selling houses.

In qualifying him he asked him if he had ever enrolled in one of these correspondence schools and he said no, he hadn't, and he asked him whether he had attended any of these seminars and he admitted he had not. And he said, "How do you feel you are qualified to express an opinion about the value of Parcel 17?" He said, "Well, I have been buying and selling houses like that for 30 years and just last week I sold three just like it."

I accepted him as qualified. I think the witness is well qualified.

Objection overruled.

Q. (By Mr. Roumell) Do you recall the question, Doctor?

A. Would you please restate the question, Mr. Roumell?

Q. Thank you, Dr. Ritzenhein, do you believe based upon your statement that you believe the solution is a metropolitan plan and that you participated in a desegregation plan in the city of Detroit, a brand new desegregation plan, do you believe that between the magnet plan and the adoption of a metropolitan plan that there should be adopted an interim plan?

[248] A. I do not.

Q. Would you tell us why?

A. I believe that if we are going to move forward towards meaningful desegregation of our youngsters, if we are going to have the fullest respect for young and for their self-development and responsibility that the shifting and opening of schools and closing of schools and most of the children around the city prior to such a time would be confused, it would be confusing to our staff, confusing to our community and certainly not educationally very sound.

Q. Do you believe that the magnet middle school program that you participated in can aid in the implementation of a metropolitan plan?

A. I agree that it could very much so. I believe it might be even the catalyst through which some of these changes could be made. If we can prove that education in Detroit can be superior even to education in a higher priced area, if we can prove our school is an attractive qualifying situation institution for youth to come and participate in, if we can convince parents throughout our metropolitan area that these kind of programs exist and can be developed within our school I think our chances to have meaningful integration experiences, desegregation experiences for our youngsters is far more easily attained.

[249]Q. Am I correct, Dr. Ritzenhein, you began to see evidence of that at the Bloomfield middle school program you participated in?

A. I feel we are sort of a forerunner as administrators of other magnet schools may feel when you take a look at the size of Region 3 which is larger than the entire city of Ann Arbor, that our youngsters are being transported throughout this area without incident and returning to their homes without incident in an area the size of, and I am thinking of a residential area, larger than the city of Ann Arbor.

These youngsters, many are coming back and forth to school, they are not missing days in attendance. There is enthusiasm difficult to describe, it would be hearsay and merely my perceptions as I am recording them to you now. I think it is, well, we are sort of miniature metropolitan plan right now all by ourselves.

Q. You are using DSR buses, are you?

A. Yes.

MR. ROUMELL: Thank you very much.

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[289] GORDON FOSTER

was called as a witness by Plaintiffs and, being first duly sworn by the Court, testified as follows:

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Q. Dr. Foster, you have previously testified as an expert witness in this cause, is that correct?

A. That is correct.

[290] Q. May I ask whether at our request you have prepared —— or, rather, you have furnished me with a vita that is substantially similar to that furnished to the Court before, but of a somewhat later date?

A. That is true, yes, sir.

Q. Dr. Foster, I hand you a vita that has been marked for identification as PC–1 and ask you whether you can identify it as your vita dated February 1, 1972?

A. It is, yes, sir.

MR. FLANNERY: I would like to offer it in evidence at this time, your Honor. Copies have been furnished to the other counsel.

THE COURT: I take it that there is no objection?

MR. ROUMELL: No objection.

MR. RITCHIE: No objection.

THE COURT: It may be received.

Q. (By Mr. Flannery, continuing) Dr. Foster, it is correct, is it not, that in addition to your other qualifications you have also been a working teacher and administrator?

A. That is true.

Q. It is correct, is it not, Dr. Foster, that you had not taken correspondence courses in school desegregation plans?

A. That is true; I have not.

[291] Q. It is true, is it not, you have actually prepared some school desegregation plans for systems?

A. I have, yes, sir.

Q. Would you identify some of the systems whose desegregation plans you have worked on and prepared during the last year to 18 months?

A. Currently I have a plan before the Court in Memphis on behalf of the plaintiffs, a system of roughly 145,000 to 150,000 people.

THE COURT: Is that a case pending before Judge Taylor?

A. No, that was the Knoxville case, I think, that you are referring to.

THE COURT: Who is the judge in this case?

A. The Northcross case is Judge McRae -- wait a minute -- I get my judges mixed up. I think it's McRae. There has been another judge on the Memphis case at one point, or maybe not.

THE COURT: Probably Judge Miller? I am just guessing.

MR. CALDWELL: Judge Miller was a district judge in Nashville. At one point Judge Boyd was a district judge in Memphis.

A. I think I only worked with Judge McRae on the case.

In December I prepared a plan at the request [292] of the Dayton, Ohio School Board for them. They are not in litigation currently. It is a system of about just under 50,000 students. Previous to that I prepared plans for the Justice Department in the Pasadena case. I worked with Dr. Stoley as a co-witness in a Norfolk, Virginia case.

Not too long ago I worked on a plan for the Richmond, Virginia case under Judge Merhige. I prepared a plan for the Petersburg, Virginia schools under the direction of Judge Merhige and at his request. Earlier plans for Corpus Christi, some smaller districts in Virginia and Mississippi.

MR. FLANNERY: I would like to retender Dr. Foster at this time as an expert witness with respect to plans of school desegregation.

MR. BEER: We have no objection.

MR. RITCHIE: No objection.

MR. KRASICKY: One question?

THE COURT: Fine.

MR. KRASICKY: Did you prepare the Richmond plan?

A. Not the metropolitan plan but the plan immediately ––

MR. KRASICKY: In trial plan?

A. Yes. The plan that is now in effect is not my plan, but it is basically similar to it.

[293] MR. KRASICKY: But you prepared a plan for the desegregation of the Richmond School District, intra-district?

A. That is correct.

MR. KRASICKY: No objection.

THE COURT: You may proceed.

Q. (By Mr. Flannery, continuing) Dr. Foster, you have been here during all or most of the testimony this week, is that correct?

A. That is correct.

Q. Did you hear all or most of the testimony by Mr. McDonald on Tuesday?

A. Yes, I did.

Q. Have you also, Dr. Foster, at my request acquainted yourself with the school desegregation plan that has been characterized as Plan A submitted by the Defendant Detroit School Board?

A. Yes, I have.

Q. Dr. Foster, do you have an opinion whether Plan A would be effective as a plan of school desegregation for the system of Detroit?

A. In my opinion it would not.

MR. ROUMELL: Your Honor, objection to the word "effective." I don't know what that word means.

MR. FLANNERY: May I amend the question?

[294] THE COURT: Certainly.

Q. Dr. Foster, do you have an opinion as to whether Plan A as testified to would accomplish the greatest possible degree of actual desegregation for the Detroit System, and if you have an opinion would you tell us what it is and the basis for it.

A. Well, is using the word "greatest," I think you would have to compare it with something else. In terms of the Plaintiffs plan I do not think it would approach in any way the amount of desegregation involved in that plan. First of all, I think it is a misnomer to call it a desegregation plan. Mr. McDonald himself testified to that effect.

Secondly, as I understand it the task at hand was to provide, to come forth with a plan that wouldddesegregate the Detroit schools in the fall of 1972. I don't think even the adherents of Plan A agree that it would do that. For one thing the plan is basically, offers unequal educational opportunity which I think is not appropriate and it sort of sets up a private school operation within the framework of a public school system by taking applications for admission and this sort of thing, and it seems to me it is inherently unequal in setting up so–called quality education for some children and limiting it to certain children who would be accepted on application.

[295] I don't think there is any promise that it would desegregate the Detroit System in the fall of 1972. Its track record for the current year is certainly far below the expectations that were held for it. Admittedly it has been a failure at the high school level and in the middle school operation where it has had some measure of success, if you relate the total amount of children involved directly in the operation, something under 4,000 children and compare it to the middle school operation it is a drop in the bucket.

If in fact the projections which were made for the fall were followed out, that is to say 40 schools would be involved as described in the presentation both vertically and horizontally, this would still only affect 20,000 children, which would leave a vast number of children still in segregated situations and not affected.

At the high school level it seems to me that the plan runs against current feelings in education about what high schools

should be. To the best of my knowledge there has been no strong counter proposal to Dr. James Conant's philosophy on the American high school which has been presented for quite a while now but his position is that the best American high school education is offered in comprehensive high schools. The specialized program envisioned by Plan A would run contrary to this [296] approach.

Certainly at the elementary and middle school levels the plan is primarily what we would call an open enrollment, freedom of choice plan, or certainly a modified one at best, and our experience in Southern desegregation has been pretty clear that freedom of choice plans do not work, and this is all seen in historical perspective at this point at least in the South.

The proposed provision for a majority to minority transfer role again seems to offer no relief because again historically in desegregated situations it has been quite clear that whites will not volunteer to attend black schools, while initially, under freedom of choice plans in the South, there were a few blacks who opted to go to white schools, this died out fairly rapidly. No large numbers of black children in any attempt opted to make this kind of transfer.

The plan would be very costly for a system that is apparently already in financial problems. It would seem to me inappropriate in light of Serrano-type decisions in school finance to attempt to minimize expenditures among school districts to have an intra-district expenditure where you expended considerably more amounts of money at some schools than others. Short of a desegregation plan that [297] is supposed to work now and to promise relief, it seems to me somewhat akin to offering a band aid and aspirin to a dying man.

Q. Mr. McDonald testified, if I understood him correctly, that because of the existing racial composition of the Detroit School System and the relatively limited number of available white students that the schools, the non-magnet schools would necessarily be composed of black children. Do you have an opinion, sir, whether such procedures are educationally sound?

A. Well, I think the majority of opinion is that they are educationally unsound in terms of the various aspects that are

supposed to accrue from the educational process, both cognitive and associational effects.

Q. Dr. Foster, have you acquainted yourself with the plans submitted by the Defendant Detroit School Board that has been named Plan C?

A. Yes, I have.

Q. Do you have an opinion, sir, whether that plan if implemented would provide educationally sound, effective desegregation?

MR. KRASICKY: Before you answer I would like to note for the record that now we are talking about metropolitan plans. Yesterday the Court entered an order allowing intervention under limited circumstances and it [298] seems to me –

THE COURT: I am not of that understanding. Plan C is the plan of the City of Detroit.

MR. KRASICKY: The metropolitan plan.

THE COURT: No.

MR. ROUMELL: It is the Humanities plan. It is the second plan.

THE COURT: It is an intra-city plan, as I understand it.

Q. (By Mr. Flannery, continuing) If you have the question in mind, would you answer?

A. Yes. Again my opinion is that this would in no way affect the desegregation of the Detroit System base. Based on my experience in Memphis which had a somewhat similar program this past year where they expended considerable amounts of educational emergency funds under desegregation for a sort of cultural mixing plan whereby the students got together after being bumped around the district for singing together and eating together and maybe working on a project together of some sort. This has proved largely ineffective in terms of any real meaningful desegregation. I don't mean to say there is anything wrong with the idea educationally, but in terms of the question at hand I think it has no effect whatsoever.

Q. Dr. Foster, there has been reference both in and out of court [299] to desegregation plans that would be based upon

metropolitan school desegregation or desegregation in the Detroit metropolitan area. Do you have an opinion, sir, on the basis of information available to you whether an approach, and I refer not to any specific plan or beginnings of a plan that may have been advanced, but do you have an opinion, sir, whether such an approach would be educationally sound and desirable?

A. In my opinion involving the City of Detroit in the metropolitan plan, it would be desirable. It would offer educational advantage, and while I haven't studied the plans in any authoritative sense, but merely glanced through them –

MR. KRASICKY: Now I make the objection. I think now we are getting into other plans which are the subject for the next hearing which will be held. I think it is improper. I think all we have in this hearing is the intra-district plans.

THE COURT: Well, I assume that you are pursuing this line of inquiry at the present time because of its relation to the Detroit plans?

MR. FLANNERY: Yes, sir. It seems to me that we have all, including Mr. Krasicky, sat here for longer than two days and heard from counsel and witnesses both that in the judgment of some, metropolitan approaches are [300] preferable to those that would be limited to the City of Detroit. There has been no objection by Mr. Krasicky before. It is not my understanding, nor intention to propose to the Court a metropolitan plan in the sense of the one in which T's are crossed and the I's are dotted, but I think in fairness to the Court and to the parties it would be unrealistic, as Mr. Roumell has suggested, to consider a Detroit Plan wholly in isolation from what may be at least in concept the viable, perhaps preferable, alternatives.

THE COURT: Yes. The objection is overruled. I don't propose to permit you, however, to go into a question of what a metropolitan plan should be, but certainly with regard to the present subject we are pursuing I think it is important to elicit the advice of experts as to whether in connection with a consideration of an intra-city plan we are talking about meaningful solutions.

He may express himself in that regard.

Proceed.

A. In my opinion a metropolitan solution would certainly be a preferable one and would offer greater stability in the long run and more meaningful education and desegregation, but I want to make it quite clear to the extent that the School Board is putting all of its eggs in the metropolitan basket and to some extent avoiding the current issue of [301] intra-city desegregation, I in no way would go along with this.

I think it is very important that children in Detroit be offered relief this coming year and if metro is something in the nature of pie in the sky a year from now, two years from now, four years from now, then I am definitely of the opinion that a desegregation plan that works and works now needs to be implemented for the children of Detroit.

Q. Thank you, Doctor. Have you, at my request or otherwise, prepared a metropolitan plan for this hearing?

A. Yes – no, a city plan.

Q. Thank you. That was a surprise and I was trying to decide whether it was a pleasant one or not.

MR. ROUMELL: We will be glad to look at it if you have it.

THE COURT: I assume he was paid to do the other and if he did this too, then you got a gift. A client of mine once used to say "free, for nothing, gratis," to make sure you understood him.

A. In education we feel serendipity is the greatest thing that can happen.

Q. Dr. Foster, I hand you a document that has been marked for identification as PC-2 and ask you whether you can state [302] for the record what it is?

A. Plaintiffs' Exhibit PC-2 is a desegregation plan for the Detroit Public Schools dated February 22, 1972. I believe in certain actions it has been referred to as the February 22 plan; for example, in the deposition taken by Mr. Henrickson it got this title.

Q. Thank you. I will ask you to talk more about it shortly. Would you identify for the record similarly, Dr. Foster, the clump of documents that have been marked for identification as PC-3?

A. Plaintiffs' Exhibit PC-3 referred to as a clump of documents –

Q. (Interposing) You may amend that if you wish.

A. It was an attempt by myself to redesign – not to redesign but to reorder the data which is found in the previous exhibit in such a way that it is a little more readable to the average person and that the facts of the situation are grasped more readily so that on the one hand the initial document has schools listed as kindergartens, elementary schools 1 through 6, mostly, junior high schools, this plan or Exhibit PC-3 has the schools listed by clusters.

There are five clusters in the plan, and they are listed in such a way that the total enrollment is given, a grade organization for each school, the enrollment [303] by race, the percentage of black composition in each school by total enrollment, including kindergarten.

This document does not include special education children, by the way. It includes both basic and adjusted capacity and for easy reference the basic information that is currently true at these various schools in terms of enrollment and structure.

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[309]...

MR. KRASICKY: Let the record show we also join in this objection.

THE COURT: Do you want to make it unanimous, Mr. Ritchie?

MR. RITCHIE: I will make it unanimous.

MR. FLANNERY: I am certainly outnumbered, your Honor.

THE COURT: Perhaps you better state your position and perhaps follow it up by asking the witness to state his position.

MR. FLANNERY: I would like to respond, your Honor.

[310] THE COURT: As I understand the question proposed which Mr. Sachs would like to have answered and is joined by his brother at the table and by me, is whether you propose to go into a matter that some of us consider already litigated and whether the plan as submitted by the Plaintiffs is not a plan except that it incorporates this feature of it.

MR. FLANNERY: I would like to respond to Mr. Sachs and the other gentlemen by making, in the nature of an offer of proof, if you will, that testimony will show that the incorporation in the plan of the feature to which Mr. Sachs and the other gentlemen object does not proceed from a perception on the witness' part of the legal obligations of the Detroit School Board and the other Defendant Intervenors. The testimony will further show it is incorporated as an educationally sound adjunct of a pupil desegregation plan and exists independently of the legal obligation which we agree has been previously litigated by this Court.

Secondly, your Honor, in my judgment from a legal standpoint if it were necessary to do so that component of the plan is severable legally. Whether Dr. Foster would agree that seriously undermines the plan or whether he would agree that it is severable if, unfortunately [311] so, or how he would characterize treating it independently of pupil desegregation I would like to ask him.

THE COURT: Yes, I wish you would.

MR. FLANNERY: Is our position clear?

THE COURT: It's clear to me, yes. I suggest you put the question to the witness.

Q. (By Mr. Flannery, continuing) Dr. Foster, would you tell the Court what underlies your inclusion of that component of the plan?

A. It seems to me in presenting a formal desegregation plan you have some alternatives. You can simply present a stripped plan which gives the data for the schools that you propose and quite often the data as they now exist to show comparisons and that's it.

Another alternative would be to include some sort of narrative description of how you went about making the plan, what your criteria were. Perhaps a paragraph or two about the background of how it was requested in the first place. For an average reader this makes the plan sometimes a little more intelligible.

A third component in this document we are discussing I think is the general recommendations that were made with regard to implementation of the plan and these are simply – there is nothing legalistic about them – [312] they are educational

matters which in my opinion would tend to increase the adequacy of the plan as it is implemented and make it more viable and more successful.

Q. Doctor, irrespective of how the existing faculty distribution came about, putting that wholly aside, would your recommendation be that contained in the February 22 plan?

A. In terms of faculty?

Q. Yes, sir.

A. Yes.

MR. FLANNERY: Does the Court wish me to go into the question whether he believes the plan would be educationally suited?

THE COURT: It hasn't suited me to the point I am interested. Tell me this, leaving aside the matters as suggested by counsel and suspected by me that the Court is now precluded from considering the matter of faculty, – call it desegregation if you will, or integration, whichever – does that mean that it would kill your plan so far as effecting desegregation in the schools leaving that feature of it out?

A. No, I don't think so. This is just sort of a bonus arrangement. I think educationally it would be sounder if they proceeded along these lines, but I don't think it would seriously hamper the pupil assignment plan.

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[323]...

MR. BEER: That is perfectly satisfactory, your Honor. Thank you.

THE COURT: I say that because this is likely to reoccur as we go along because that has been our past experience and that is the understanding we will have betwen us.

MR. FLANNERY: That certainly represents our view, your Honor.

THE COURT: It may be received on that basis and with that reservation and on that condition.

Q. (By Mr. Flannery, continuing) Dr. Foster, are you familiar with the flow maps to which Mr. Beer referred?

A. Yes, I am.

Q. Did you make use of those as well?

A. Yes, I did.

Q. Dr. Foster, I would like to ask you, sir, to describe for us the substance of the plan that you have prepared and in so doing, sir, I ask not that you, with respect to every school or every grade level, that you explore [324] the plan in infinite detail, but if you would, sir, please state the steps involved in your operation, the data relied upon in preparing those steps, and would you in the course of your description illustrate on the basis of the exhibit now evident your manner of preparation of the plan and the results secured?

A. First of all, the data which I used in the plan have been submitted as exhibits. The capacity and enrollment by high school constellations for September of '71, the breakdown of schools by grade by race made in October of '71, the various maps that have been involved in the case prior to this, and then finally the material prepared by Mr. Henrickson which was for all practical purposes the base of our plan and our plan.

I think it might be helpful to go briefly through one cluster to illustrate how the plan works. Perhaps we won't need to do that for every cluster because it would be pretty time-consuming but the same principle would go from cluster to cluster in terms of how we proceeded.

First of all we did have some criteria associated with the plan development. One is that, of course, both majority group members and minority group members would be treated equally in terms of assignment, transportation, whatever the niceties of the plan involved as far as pupils were concerned. I think this has largely been followed.

[325] For example, I think in terms of transportation it involved pupils in Cluster 1. There is a very slight difference between the total number of blacks required under this manner to be transported and the total number of whites. We also asked the Board to prepare estimates of transportation required. These were to be placed on a limit of approximately one mile for elementary students and one mile and a half for junior high school students. We asked that the feeder pattern in the Detroit System in the

high school constellations be reconstructed in such a manner that the flow from elementary schools to middle schools or junior high schools would result in junior high schools that were substantially proportionate in racial composition and the flow from junior high schools to senior high schools would again result in substantially proportionate racial makeup at senior high schools.

Then at the elementary schools it remained simply to work out a system of pairing and clustering, changing grade levels in such manner that the racial makeup of the elementary schools would also be roughly proportionate.

Initially the clusters were developed so that the five clusters were themselves of an approximate racial makeup and I think the percentage of white and black did not vary more than perhaps 2 percent among the five clusters.

So another suggestion we made was that [326] initially at least the kindergarten children be assigned to the present base until at least such time as we could see how the plan would develop and what would be required in terms of transportation time and distances and how the enrollment patterns would fit into capccities of buildings and so forth. So these were left aside.

One other requirement we asked of the plan's development was that in pairing or clustering elementary schools, historically in desegregation plans in some cities there has been a tendency for formerly black schools or predominantly black schools to be assigned upper level pupils at the elementary grade, that is to say grades 4 to 6 and grades 3 to 6, grades 5 to 6; what we call the intermediate grades would be assigned to the formerly black schools and the primary grades would be assigned to the formerly white schools.

We requested that this not be done in the plan, but that there be sort of an indiscriminate chance distribution so there would be a large number of primary pupils assigned to formerly black schools as well as to formerly white schools. I think that this has been done very effectively in the plan, to the best of my knowledge.

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[346]. . .

THE COURT: Well, the difficulty I have with it, Mr. Flannery, is the method in which you are proceeding. I am willing to entertain the opinion of this witness, but I would rather he got to it. I think it would be better if you let them cross-examine on his bases for his opinion. Let's get his opinion on these matters and then let counsel proceed to probe and search as to how he got there.

MR. FLANNERY: Thank you, your Honor.

THE COURT: His qualification so far as I am concerned has been accepted by the Court.

Q. Dr. Foster, would you proceed to your conclusion then with respect to this cost.

A. My conclusion is the cost of estimated transportation would be $4,300,000, which I believe is less than 2 percent of the Detroit annual budget. It would round out at something above $50 per pupil, and I think this is well within the realm of reason and ball park figures that are comparable to other situations in Dade County, Miami, Florida, for example, they have a fleet of 170 buses which currently transport 35,000 students.

THE COURT: A fleet of how large?

A. 170 buses, and they transport 35,000 students with these buses, and they have trips out into the swamps of up to 60 miles each way.

THE COURT: How deep?

A. It depends on the season, but Dade is a fairly big county in terms of geographical area.

THE COURT: Do you know how it compares with Wayne in total size area?

A. No, I don't, but I would guess larger considerably.

A. Doctor Foster, state whether you would recommend to the Court that the plan in its present form be ordered into implementation for the fall of 1972?

A. Well, in discussing the exhibits with recommendations or an example of changes to be made, I think I stated I would recommend that these changes be made in light of the principles involved and I think they could be rather easily, either by myself

or by the Detroit School people. I think with that provision I would so recommend that it[348] be incorporated in the fall of '72.

Q. Doctor, can you state, sir, approximately how long it would take you or officials of the Detroit system familiar with the Detroit System to put the plan in final shape, or to put on the finishing touches, if I may characterize it?

A. I should think Mr. Henrickson's staff could do it in a matter of several days, three or four days. I would want a little longer to acquaint myself with some of the questions I have raised, some of the variables and factors and visit some of the schools perhaps, and this sort of thing.

I would estimate maybe a week or 10 days. I would want to feel comfortable with that myself.

Q. From the standpoint of educational soundness, Dr. Foster, would it be your recommendation that a plan embodying these principles could be implemented for the fall of 1972?

A. I think it could, yes, sir.

Q. Dr. Foster, do you have an opinion, sir, whether a plan embodying the principles you have described implemented in the fall of 1972 would be or could be synchronized with the metropolitan approaches to desegregation?

A. You are asking this question assuming that a metropolitan plan might take effect a year afterwards or two years [349] afterwards or something like that?

Q. Yes, sir, just as an assumption for the purposes of the question.

A. I think I stated in the narrative that the plan was not designed with metro in mind. However, under deposition with Attorney Beer I think I also stated in a configuration sense it seems to me that a plan like this would be involved in any metropolitan plan that was developed.

I haven't gone into them extensively, but it seems to me any metropolitan plan that is developed is going to have to cut into the City of Detroit in some sort of pie, wedge-shaped pieces, in order to pick up Detroit students.

In a configuration sense these five clusters that have been developed would serve as an initial base for this sort of involvement with some changes. I think in that sense the plan could be transposed over to a metropolitan plan.

Q. Do you have an opinion, sir, whether a plan embodying these principles would be more compatible or less compatible, or equally compatible than the magnet Plan A would be with a metropolitan desegregation approach?

A. I think that is sort of difficult to answer because the promises of the magnet plan are only promises and I [350] don't think there is any way we can estimate what will actually happen to the extent that the magnet plan, Plan A, does not actually result in any appreciable desegregation. Presumably then a metropolitan plan coming later would simply take Detroit as it is now and build on that base to the extent that this plan would in fact desegregate at all levels of the City of Detroit.

Then there would have to be more changes just on that basis alone, assuming then that a metropolitan plan came later. Basically I don't think that either plan is geared towards translation into the metropolitan arrangement specifically.

Q. Dr. Foster, assuming that implementation of a plan such as is followed by metropolitan desegregation would in some sense occasion greater inconvenience to the system than permanent implementation of this plan or immediate implementation of the metropolitan plan; on that assumption do you have an opinion sir whether integration would be more harmful to the pupils of Detroit than the greater inconvenience resulting from two changes in a short period of time?

A. Well, I think educationally the adoption of the proposed plan would be advantageous if for no other reason than the fact it would simply happen and a bird in the hand [351] is always worth more than a bird in the bush.

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[356]. . .

Q. Dr. Foster, during your cross examination you talked about a plan that works. What do you mean by a plan that works?

A. A plan that desegregates. This is, I think, taken from court parlance which says the court wants a plan that works and works now, works realistically and works now, something to that effect.

THE COURT: Do you know what they meant?

A. Well, I think in terms of what Mr. Beer was referring to as a desegregation process is what they meant and the court wasn't involved in the educational niceties but the constitutional requirements.

Q. Are you saying then that you view the process of desegregation as having been completed at a time when proportionate pupil assignment along with the other technical factor you mention has been completed. That is a plan that works in your view, is that correct?

A. Yes, if that is taken care of as far as the constitutional requirements are concerned and then this is a plan that works. [357] That doesn't mean it's guaranteed to be educationally successful but the constitutional requirements are taken care of.

Q. So that when you use the phrase "plan that works" you are not addressing yourself to something as population stability, that is, stability of student population in the plan?

A. Well, I think that would depend on where you were because some courts as I have read decisions as a layman would include in their conception of a plan that works, this matter.

Q. You did not, sir, as you used the term?

A. I would say in this particular plan that population stability was a factor in the sense that if you have a completely segregated plan that is put into effect it definitely, in my estimation pormotes stability.

Q. I wasn't directing my question to the plan quite yet but just as you use the term "work" that is not necessary, although you may have done it here, is that correct?

A. My opinion about a segregation plan is that if it is a good one it will provide for stability.

Q. But it could be a desegregation plan without doing so, as you use the term?

A. It's conceivable, yes.

MR. ROUMELL: I can't hear you, Dr. Foster.

A. I said that would be conceivable, yes.

Q. How about the question of educational benefit derived from the [358] plan, is that necessary in your definition of a plan that works?

A. I would hope that any desegregation plan would be educationally beneficial, yes.

Q. But is it possible, sir, that you could have a desegregation plan that works as you use the terms that does not have an educational benefit?

A. I don't think that you can guarantee this in recommending a plan for implementation that it is going to, in all cases, be educationally beneficial. We go on the assumption that is what we are doing it for in the first place and if it is carried out with prioriety and respect that it will be educationally beneficial.

Q. Dr. Foster, in your comments and what I believe is PC 2 the original document, you do refer to the purpose of the plan as being to eliminate racially identifiable schools so that the community does not have black schools or white schools but just schools. I hope this will be the last definition I ask for. What do you mean by a racially identifiable school?

A. I think a racially identifiable school, the term has to be taken in context to the system that is under consideration and that you can basically assign the description of racially identifiable to any given school until you do consider the school within the context of the total system.

[359] Technically I think racially identifiable school is one that is disproportionate in racial makeup to the other schools in that system. I think I stated in my deposition with you that in my opinion there is also a psychological factor involved and that I am not sure but I believe I mentioned the Tampa system in Florida which is a metropolitan system as all counties are in Florida since they are county districts.

But there are, under Tampa's present plan either two or perhaps three schools that from a numbers standpoint would be racially identifiable because they are either close to being all white or black or they are, I don't remember exactly but within the total

context of the Hillsborough County or Tampa system, I would not say they are racially identifiable because they are isolated schools and for certain reasons the community I don't believe perceives them as being racially identifiable or as segregated schools.

Q. Dr. Foster, let me ask you this, in your judgment would a school in Detroit today, right now, which has a student population that was 65 per cent black and 35 per cent white be a racially identifiable school?

A. I suppose by my definition in a sense it would be completely disproportionate to most schools in the system if it were 65 per cent black and 35 per cent white, so in that strict sense [360] it would be racially identifiable.

In terms of Detroit as a desegregated system where the racial mix is 65-35 then, of course, it wouldn't be.

Q. You are saying that under the current system it would be racially identifiable under the system as it is now?

A. In a technical sense because it would be so different to most of the other schools in the system which are either all black or all white or nearly so for the most part.

Q. Let me ask you this question: If you are saying then if all of the schools are 65-35 it loses its identity. I take it its identity would be as a black school now, is that what you suggest currently?

A. It would be in the sense that you put it I think as a school that was racially different in makeup from most of the schools in the system.

Q. Perhaps I am assuming incorrectly, Doctor, that the concept of racial identifiability assumes there is a race with which the school is identified. Would a school that is 65-35 currently be designated as a black school or white school?

A. It obviously wouldn't be identified as a white school I suppose what –

THE COURT: I think what the Doctor is saying is if you have a bushel container and most of the fruit in it is apples and you came across three or four oranges, they have [361] differences from the apples but if it is all apples and you have a certain kind you don't find any difference between them, therefore you don't identify them as different.

Is that what you mean?

A. Yes, in a technical sense it would be different racially in its makeup than the other schools in the system for the most part.

THE COURT: I suppose the good doctor is saying if all of the schools in Detroit are 65-35 there is nothing to identify them as different from but if most of them are 100 per cent one way or the other and a few are 65-35 then they are different.

Is that what you are saying?

A. Exactly.

Q. Doctor, how big is the bushel basket, to continue Judge Roth's analogy. Is the percentage of racial identity contained in the city of Detroit in your judgment or does it extend beyond its boundaries?

A. Again it depends on the framework within which we are operating. If we are talking about Detroit schools in the Detroit system which I think we are, then I think we are talking about the bushel basket being limited to Detroit. If we are talking about the metropolitan area and the schools of the metropolitan area related to Detroit then the bushel grows larger.

[362] Q. If we are dealing with the impact of what we do here upon the child in the Detroit schools, particularly the black child which frame of reference is most appropriate in terms of the impact upon that child?

A. I think for the purposes of this discussion the Detroit system reference.

Q. Why is that, sir?

A. This is what we are talking about. I don't believe we are discussing metro.

Q. My question is, let me put it another way then, Doctor. If a black child in the Detroit school system is in a school which is 65-70 per cent black will that child have an awareness of schools that are predominantly white or all white in your judgment even if all of the other schools in Detroit fall within the same range as his?

A. You mean if these predominantly white schools or black schools are outside the Detroit system?

Q. Yes.

A. Well, I think he is certainly aware of it in a larger sense in that he would perceive he is part of the Detroit system and that surrounding Detroit was a greater metropolitan area with suburbs that were largely white with a few exceptions. However, if the February 22 plan were incorporated or a reasonable version thereof, in my opinion he would not perceive of his [363] school situation as being segregated or isolated because he would know and be certainly aware regardless of his situation in Detroit in relation to the metropolitan area at least he had the same situation as all of the other kids in Detroit.

Q. Is it your testimony, Doctor, that the individual school child has an awareness not only of what goes on there in his school but what goes on in the schools around him?

A. I think we discussed this in the deposition and my answer at that point was I would assume that the older the child gets the more awareness of this sort of thing he has and probably in the primary grades he is more aware of his immediate environment but as he grows older and is in secondary school and so forth I would assume that he would be aware of the total environment.

Q. Your testimony then is that his predominant awareness is of those things closest to him in his own school, is that correct, particularly with reference to elementary children?

A. I think this is true of all of us.

Q. Could you describe, Doctor, the process as you understand it by which a school child would benefit from this awareness that schools around him had been brought to this common ratio?

A. Would you repeat that, please.

Q. Doctor, you told us that there would be a benefit to this child from performing the operation which you propose to [364] perform through your plan and you told me further that that benefit comes about by bringing about a uniform proportion throughout the system and you have then told me that the child benefits by recognizing that these things are happening in other schools.

I am asking you as an educator and as an expert in the process of learning to explain the process by which that benefit reaches that child.

A. I think it does so in a variety of ways. One certainly would be in his own self-concept in knowing that the city of Detroit and the Detroit school system was offering him the same opportunities that it offered all of the other children in Detroit in a rough way, so that he would not feel that he was, shall we say, racially isolated or contained in a segregated situation.

I think this would be very effective also on the expectations that were made for him by particularly teachers in terms of such things as a self-fulfilling prophecy and also parents and others whose expectations for children in ghetto schools or racially isolated schools seem to be considerable different than for those in suburban type schools or predominantly middle class or white schools.

I think the chances in a city like Detroit of his obtaining benefit from what we might call delivery of [365] services would be greatly enhanced by this desegregation process because there seems to be a tendency for desegregation to more equally balance such delivery of services.

Q. Would you perceive those same benefits occurring in the same fashion where the racial proportion of the Detroit school system as a whole 80 per cent black and 20 per cent white so that the average child would be in a school that was 80 per cent black?

A. Insofar as the city of Detroit was concerned I think so, yes. Insofar as something like the delivery of services, for example, were affected by an all black school district surrounded by mostly all white districts in the total context this might affect the situation.

Q. It would have a greater affect at 80 per cent than 65 per cent?

A. Well, I think the chances of something like delivery of services being equal to an all black city school population or nearly all black in a society that is 80 per cent white would be lessened.

This is one of the reasons why I have spoken in behalf of metro.

Q. How about a perception of himself as being racially isolated? Would a child feel that way in an 80 per cent situation even though the rest of the schools were 80 per cent black thereof?

[366] A. If the metropolitan portion surrounding the Detroit system has its makeup of 95 per cent white or whatever it is, as the child becomes more aware of his larger environment then I am sure he would be aware he is in a city and goes to city schools that are almost all black.

Q. Would that same phenomenon occur in a school that was not 65 per cent black?

A. I think so far as his position in the city is concerned the important thing is equality in respect to the rest of the city.

Q. Doctor, I have this problem, we talk about the case at 80 per cent, we seem to find it necessary to discuss the suburbs. When we are talking about the 65 per cent it seems to be possible to discuss it in terms of the framework of the city alone. What I am wondering about is what is different between the two cases? What are the processes that occur in terms of the child's frame of reference that are different at 65 per cent than at 80 per cent?

A. I don't think I intended for the interpretation to be that different. I would also state that in a 65 per cent system the child as he becomes more aware of the surrounding environment would also be aware he was in a city school, a school system that was majority black as compared to the suburbs that were majority white to an even greater degree.

Q. So he would then even at 65 per cent have some sense of racial [367] isolation, is that correct?

A. Not within the context of the city but in relation to the metropolitan area. He would at both levels yes.

Q. Doctor, let me pose this hypothetical: Suppose you have a student in a school in Detroit now which is 50 per cent black and 50 per cent white and that student is moved to a school which is between 65 and 70 per cent black, what will that do to that particular student's sense of racial isolation or racial identifiability, in your judgment?

A. Well, I think the important determinant in any interpretation of a person's situation such as school children, would be how he is being treated in respect to the other children and if, for example, a person, a child was in a 50–50 school at the moment and a desegregation plan were adopted and he found himself in September in a 65 per cent black school or whatever your figures

were, so long as this was a common lot and he didn't feel that he was being assigned indiscriminantly into the situation I don't think this would bother him in any regard.

Q. Doctor, do I understand you to suggest in the case of let's say in a magnet middle school now which is approximately 50 per cent black, say a fourth grade child or fifth grade child that that child finds he is moved to a school which is 65 or 70 per cent black, is that, or is there any possible increase [368] in feelings of racial isolation that might occur by having his association with whites virtually halved be overcome by his awareness of the fact that other children in the city were being treated in the same way? Is that what I understand you to say, sir?

A. To some extent, it might vary a bit if the child is white or black.

Q. Assuming a black child.

A. Yes, it seems to me if he perceives other schools in the same situation and that they are within a reasonable range of having a similar proportion in their racial makeup that he is not going around counting the number of his classmates that are white or black and if the number increases by 10 per cent, deciding he is all of a sudden in an isolated situation.

Q. So in spite of the fact that you suggested that his perceptions that are closer to him are more salient, perhaps is a good word for that, you would feel in this particular case the change would not be significant enough so that the outside perception would not prevail, is that correct?

A. That's correct. I think most children don't worry about this as much as their parents.

Q. Dr. Foster, let me pose this hypothetical question: Suppose absent a plan and on its own motion the Detroit Board of Education had arranged attendance zones with regard to a [369] particular zone so as to move blacks from a school which was 45 per cent black to one which was 75 per cent black, now would you regard that as a discriminatory or segregatory act if the Board had done that without being ordered to do so?

A. If the Board on its own volition moved children from a 45 per cent black school?

Q. To a 75 per cent black school.

A. Would I consider that discriminatory?

Q. Yes.

A. I don't think you can make a decision like that out of context and presumably they would have some reason to do it and if I made the assumption that the reason was non–discriminatry than I don't think if I understand your question correctly that I would consider that a discriminatory act by the Board.

Q. Is it not a fact, Doctor, that early in the course of this trial you testified with regard to numerous boundary changes which have roughly that effect?

A. I am not sure to what you are referring precisely.

Q. I recall and I am not going to burden the Court with citations from the previous transcript, reading your testimony with regard to a significant number of boundary changes proposed by the Detroit Board of Education in which you testified simply from knowledge of the boundary change that it was your opinion that the purpose of this was to promote segregation. I do [370] recall a number of those cases being within that range. I simply ask the question here so as to avoid considerable recourse to the transcript. I will ask the question again with that further context for it.

A. If it's true that I made that statement then presumably I made it in the context of certain reason and I presume I felt that way at the time. I don't understand what you are referring to and I really don't think I can comment without knowing exactly what you are talking about.

Q. Dr. Foster, would you predict that adoption of this plan would make any significant change in the achievement level of students in the Detroit schools?

A. I would hope that it might, yes. It depends on what you mean by significant.

Q. Would you expect that schools currently within this racial range, the range from 55 to 75 per cent black would achieve well in the system as it now exists?

A. I'm not sure I understand your question but I guess my answer to be I think they would achieve better than schools that were all black or were more racially isolated by and large.

Q. Would it seem surprising or unusual to you, sir, if I told you that 80 per cent of the schools in that range achieved below the city norm in terms of schools existing in the City of Detroit?

[371] A. In what range?

Q. Between 65 and 75 per cent black, the range suggested by your plan.

A. Not necessarily. It depends on what the schools were and what situation they are in. For example, by illustration of my reply I think it's generally agreed that if a school is in a changing situation racially that the benefits that are to be expected from desegregation are often postponed, that is to say, what we call an unstable desegregated school is not conducive to increased achievement and knowing what I do about Detroit I would guess that most of the schools that you are talking about within that range are probably schools just like this that are in the process of changing from predominantly white schools to predominantly black and some of them fairly rapidly.

Q. Would you expect the schools created with that range by your plan would escape that pattern of change?

A. That particular pattern I would, yes.

Q. What would benefit them in that regard?

A. Pardon?

Q. Why would that happen in regard to those schools? What would they have going for them that would prevent that happening to them?

A. I think a variety of reasons, one is that if this range were [372] accomplished for the entire system to that extent it would promote stability in regard to particular schools because as things stand now you have certain districts which are moving toward black increase and sometimes they do very rapidly.

In my opinion there is probably a point at which white flight in Detroit would be expected to level off because school factors are certainly not the only factor or is not the only factor in white flight. There is certainly a lot of economic considerations and as I read the case many people in any city are frozen into where they are because of economic considerations. That is not to say that I wouldn't anticipate white flight following the adoption of the proposed plan.

Q. Dr. Foster, I believe you testified earlier that the plan in Richmond, if not your plan is at least one that follows the mold of your design, is that correct?

A. I believe it is, yes.

Q. How or what factors have you included in your plan for Detroit to promote stability that were not present in the plan you drew for Richmond?

A. Well, that has been a while ago. As I remember it the criteria would basically be the same and I take it that you are inferring there was considerable instability in Richmond.

Q. Perhaps you could answer better than I. Do you have any [373] knowledge of how much instability there has been in Richmond or what change there has been in the racial proportions in that city?

A. Not completely because I don't often go back to where I have been--but I have been invited to go deep sea fishing in Corpus Christi.

Q. That plan hasn't been implemented yet, has it?

THE COURT: Welcome, stranger.

A. It is my understanding that there was approximately ten per cent exodus from the city in Richmond following the adoption of the plan and at that point things leveled off.

Q. Is that 10 per cent of the total school population you mean?

A. I'm not certain. I would guess, usually in this sort of plan we would expect somewhere between 5 and 10 per cent and then the re-entry usually occurs starting the next year and the situation tends to stablize somewhat.

Q. Would it surprise you, sir, or strike you as impossible if I were to suggest 37 per cent of the white students in the Richmond system left within the first 13 months after the implementation of your plan?

A. 37 per cent of the white students?

Q. Yes. That would amount to some 8000 students in a district of 50,000 and 24,000 or 25,000 were white.

A. Yes, it would surprise me because if that is accurate I did [374] realize there were that many.

THE COURT: I think we better take a recess at this time.

How much further examination of this witness do you gentlemen have in prospect? Perhaps I better make some allotment of time depending on how much you expect to do. How much more do you have, Mr. Beer, in your judgment?

MR. BEER: In my judgment I would expect I would have more than a half hour more.

THE COURT: That is quite a bit keeping in mind there is a plane leaving Detroit.

How about the rest of you gentlemen?

MR. KRASICKY: About 20 minutes.

MR. SACHS: Perhaps a few minutes.

MR. RITCHIE: I would like to reserve a half hour. I may be shorter but certainly no longer than that.

MR. BEER: Most of my remaining questions deal with the issue of transportation; I think in terms of general exploration of the plan I have just a bit more.

THE COURT: How do you propose to get this done today then, that is my question.

MR. BEER: Perhaps we should ask the witness when his plane leaves, not that his time is more important that the Courts.

[375] THE COURT: I don't want you taking his examination in a darkened courtroom with nobody present.

MR. BEER: I did say, I don't know if you heard, I didn't mean to imply his convenience was more important than the Court's. I don't know if his plane leaves earlier than the time the Court would propose to adjourn.

THE COURT: Perhaps you gentlemen can huddle a little bit during the recess. I would like to accommodate the doctor and I think if you telescope your questions and dovetail the areas you want to cover we ought to be able to manage it in fairly short order. I don't mean you can readily exhaust his knowledge but what is important to our case I think you can delve into in fairly short time.

We will be in recess for a few minutes.

(A recess was taken)

THE COURT: I think I have resolved our timing problems. Mr. Beer, you may have 20 more minutes. Mr. Krasicky you may have 20 minutes. Mr. Sachs you may have 10; Mr. Ritchie you may have 10. For redirect, ten minutes. None of you have to consume all the time I have allotted.

Q. (By Mr. Beer, continuing) Dr. Foster, you indicated earlier your perference for a metropolitan solution to this problem. I take it that preference is not simply a personal preference but it is based on the belief that a maximum possible [376] desegregation situation requires utilization of all or part of the metropolitan area, is that so, sir?

A. Yes, I think it would be a preferable arrangement to have a metro plan rather than a City of Detroit plan.

Q. My question goes not to a question simply of preference but it is your belief regardless of what can or can not be done taken out the word "possible" out of "maximum possible desegregation", that maximum desegregation would require this. Is that a fair statement?

A. Yes.

Q. Dr. Foster, you testified that the plan you have drawn was not designed for the purpose of eventually becoming a metropolitan plan. Could such a plan be drawn?

A. In Detroit you mean?

Q. Yes.

A. Well, it's obvious, it seems to me that any plan that was effective in terms of desegregation would have to undergo a considerable revision just from the standpoint of numbers and schools, school assignments. When a metro plan were effectuated, assuming you had a reasonably comprehensive metro plan rather than just a piecemeal one.

Q. Is it your judgment, sir, that had you taken into account in designing this plan the possibility that a metro plan would come into being or perhaps even better a metro plan existing [377] in design that your plan would have looked different than it looks now?

A. I'm not certain how much because I am not clear to what extent you can develop a plan for Detroit which would in effect later be grooved into a metro plan.

Q. But it is possible that it would look different?

A. Yes, I think I stated so, yes.

Q. Dr. Foster, besides the Richmond plan have you designed any other plans for major cities which have been implemented in the school system in which they were, the school system was majority black at the time of the implementation?

A. I think as it now stands Memphis is majority black.

Q. Your plan is in operation there?

A. No, I'm sorry. For major systems the answer would be no.

Q. Richmond is the only one?

A. I can't recall any.

Q. I recall previous mention in the deposition of Petersburg, Virginia but I take it we can both agree this is not a major system?

A. Right. I have worked with other people——well, I was going to say Atlanta but that has not been developed yet.

Q. That has not been implemented yet?

A. Right.

Q. Do you feel, sir, is it your judgment that the experience in [378] Richmond is a fair indicater of what might happen in Detroit?

MR. KRASICKY: In what respect?

Q. In terms of racial stability within the system.

A. It's sort of a difficult question. I have an idea that the demography of the two cities is enough different so different results might be expected although I would believe there would be similarities in pattern. I think I mentioned earlier there are obviously other considerations besides school desegregation and that the economy of the Detroit population is certainly different than that of Richmond, I believe by and large, so there might be factors here which would make things somewhat different.

MR. BEER: Let me ask the Court's indulgence for a moment.

(Discussion at counsel table)

Q. Let me now direct your attention to the issue of transportation. You heard Mr. Kuthy's testimony in its entirety I believe, did you?

A. I don't think I did, no.

Q. Were you here——

A. I was in on some of it.

Q. Were you present when Mr. Kuthy testified that the average speed at which a school bus moves throughout a metropolitan area was 12 miles per hour?

[379] A. I don't remember.

Q. Would you disagree with that statement, sir?

A. He is an authority, I assume it's correct.

Q. You have no quarrel with that statement?

A. I don't really know.

Q. In terms of transportation of elementary school students you mentioned that the distances listed are basically school to school distances in your submission PC3, is that correct?

A. That's correct.

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[384]. . .

Q. Do you have any knowledge, sir, of the percentage capacity of DSR transit buses at the time you would envision moving these students? In other words, at 8:30 in Detroit, do you know if the bus system is straining at 100 per cent capacity or the buses are rolling half empty or what; is that within your knowledge?

A. No, it isn't.

Q. I take it you have no knowledge then as to whether or not it would be necessary to purchase further transit buses to accommodate the increase you envision at the high school level?

A. I don't think I am sufficiently prepared to make that judgment.

MR. BEER: I have no further questions.
I think I'm six minutes early, too.

THE COURT: I appreciate it, my wife appreciates it and a few other people.

MR. BEER: So does mine.

CROSS EXAMINATION BY MR. KRASICKY:

Q. Dr. Foster, do you have in your possession a copy of Exhibit PC 3?

[385] A. Yes, I do.

Q. Would you turn to page 6.

A. The sixth page?

Q. Yes. Will you look at the fourth line, Owen, and you will notice there is one white child to be transported and 27 black.

A. Yes.

Q. Look also at Boynton which is the last line and you will notice there are 203 white children to be transported and 1 black child to be transported.

A. Yes.

Q. Can you explain the rationale for the one in each instance, if you can?

A. These are simply children that are currently enrolled at the respective grade levels in these schools who were under the plan assigned and the numbers just happened to work out that way.

Q. Can you tell me how you picked that one pupil in each instance?

A. In the case of Owen there are 28 children – I will have to look at my worksheets.

Q. If you would. I would like to understand is there a rationale that when you move pupils out of the school that you should move both black and white pupils out of the school?

A. It just happens to depend on the number of students that are estimated to be at that grade level.

[386] THE COURT: I'm not sure I understand your question, Mr. Krasicky. Are you trying to find out whether one of the factors the doctor took into account was a desireability of

transporting, that is, of having a passenger body composed of both races?

MR. KRASICKY: No. What I am trying to find out is if there was going to be a mass movement out of any school.

A. This consists of students at the first and second grade level who are assigned to Owen from Chaney and there happened to be in the Chaney first and second grades 171 total children, 9 of whom are white. Half of them are assigned at Beard, Grades 1 and 2, half of them to Owen. It was estimated that a certain number of these would be outside the mile range and so a figure was simply made on a percentage basis that one of these would be white and 27 would be black. You understand we have no data which gives the exact distance from school and the number of kinds on the block that are black or white and this sort of thing.

Q. I believe you testified you prepared an intra-district desegregation plan for the City of Richmond?

A. That's correct.

Q. Did the plan that you projected in your opinion meet the constitutional requirements of the Fourteenth Amendment?

[387] MR. FLANNERY: May it please the Court, to the extent Mr. Krasicky is asking Dr. Foster to answer a legal question I would ask that neither the Court nor counsel be bound by the layman's answer. I don't object to Mr. Krasicky eliciting a notion whether Dr. Foster thought the plan met all of the requirements.

MR. KRASICKY: That is all I am asking. We know it was not adopted in its entirety.

MR. FLANNERY: I am just concerned about getting Dr. Foster too far from education and too far into law.

THE COURT: He may express his opinion as an expert in his own field on that.

A. As I remember the situation, yes, I thought that the plan met the requirements of what we then called a unitary school system.

Q. Do you think that the plan that you had prepared for the plaintiffs that is under consideration today, do you think that meets the constitutional requirements of the Fourteenth Amendment?

A. I believe that it would in terms of at least the factor of pupil assignment which is what the plan is primarily about?

Q. I believe you pointed out you had some reservation about the four middle schools although they are not racially identifiable [388] schools.

A. The reservations I had about those was only that they were not included in the data and I simply mentioned that in a final revision they would have to be included as part of the Detroit system.

Q. I think you mentioned one or two other schools that were omitted.

A. This was simply a clerical oversight.

Q. Assuming they met the general scheme that you have used, your plan would eliminate racially identifiable schools within the school district of the City of Detroit, would it not?

A. In my opinion, yes, sir.

Q. I believe you testified that in your opinion after a desegregation plan is adopted and put into effect there is some movement of people from the school district, did you not?

A. Yes.

Q. You gave that estimate as 5 to 10 percent?

A. That has been roughly my experience, yes, sir.

Q. Is it your opinion that if this Court were to adopt the plan proposed by plaintiffs that there would be such departure in that approximate number?

A. Well – yes, in addition, of course, I think we all recognize that there is continuous movement of this nature anyway.

Q. I'm glad you raise that because I want to ask you about it. I [389] believe at the hearing in Memphis you talked about mobility, you talked about percentage of people who are moving each year. Is there a figure of people that move each year, in your opinion?

A. In Detroit?

Q. Generally.

A. That move from the innercity to –

Q. That just move.

A. In the United States?

Q. Yes, the United States.

A. I think the book "Future Shock" which is widely read these days states the figure of 20 per cent mobility of the American population. The figure I quoted in the Memphis thing you are talking about –

Q. That was 20 per cent, was it not?

A. Yes.

Q. Would you tell the Court what re-entry is? I believe you used the term "re-entry."

A. Out of context I don't remember using it.

Q. Let me put it another way. Can we reasonably expect in your opinion should the Court approve your plan that after a passage of time that there would be movement of people back into the city?

A. I see what you are saying.

[390] Q. Yes.

A. One of the phenomenon that is exercised here, in the south particularly, is the business and I guess it is not peculiar to the south, is private schools; so it's not so much physical movement in and out of the city as many times just changing schools so that the experience in many places in the south, for example, would indicate that following a fairly extensive de-segregation plan there is considerable movement to private schools which are set up for the most part by church groups and for various reasons after a period of beginning the following year and then continuing there is a gradual re-entry of a large number of these students.

Q. Are there any statistics on the amount of re-entry that could be expected?

A. I think there are some but I'm not familiar with them.

Q. Dr. Foster, in your opinion, your proposed plan to de-segregate the Detroit school district is a sound educational plan, is that correct?

A. Yes.

Q. Assuming that Detroit were an island completely surrounded by water, much like Beaver Island, I don't know if you are familiar with that.

A. No.

Q. Surrounded by a mass of water on all sides, do you have any [391] doubt as to the soundness of the plan you have submitted to the Court for the desegregation of Detroit?

A. I would think not.

Q. For the reason that your plan would eliminate racially identifiable schools?

A. Is this the reason I think it is educationally sound?

Q. Yes. I am going to try to lead you in steps. Secondly, it would provide for equal treatment of children, would it not?

A. I think so, yes. I perceive it as non-discriminatory in that regard.

Q. In your opinion this would improve the educational opportunity of the children of Detroit?

A. Yes.

MR. KRASICKY: Thank you.

MR. SACHS: I trust in light of your ruling on my objection, the offer of PC 2, and the objection to Mr. Beer's question I may without prejudice to my position interrogate the witness in a general fashion that your Honor described?

THE COURT: Yes, of course.

CROSS EXAMINATION BY MR. SACHS:

Q. Dr. Foster, I trust that in your preparation of PC 2 with [392] respect to proposals as to what you refer to as student desegregation you gathered various data from the Detroit school system did you not?

A. This is the February 22 proposal?

Q. Yes, the current proposal.

A. Yes.

Q. I take it as part of that you collated data regarding where students were, what their races were, what schools they attended and so on?

A. Yes, sir, those were part of the data, those are the facts.

Q. You dealt with the specifics of the individuals involved as far as students were concerned, their schools and where it was projected that they would be sent, as part of a desegregation plan, is that correct?

A. I'm not – I think so, yes.

Q. What I am simply asking is whether in the course of the preparation of PC 2 you have dealt with a good deal of specifics so far as students are concerned.

A. I would say so, yes.

Q. You sought to deal with a specific enumeration census of students by race and location, is that correct?

A. Yes.

Q. After you marshaled that data you thought necessary then you devised specific proposals which are embodied in PC 2 and PC 3, [393] is that correct?

A., Yes, except that through the system for procedures that were devised the primary plan came from the school staff and with our corroboration and reaction to it.

Q. I take it that that process that you are describing involved a good deal of time and effort on the part of many people?

A. I'm not sure how much but I would assume so, yes.

Q. As far as yourself, was there a good deal of time involved?

A. There was.

Q. Could you estimate that time?

A. In terms of working with Mr. Henrickson on two different occasions in Detroit, a day each, or most of a day and in terms of working myself I would estimate at least the equivalent of eight or nine working days with some clerical assistance from a couple graduate students that I paid to assist me with some of the figuring.

Q. I would assume from that and from earlier testimony that there is a good deal of work product that is ultimately reflected in what has been offered in evidence which is not in fact before the court, that is, your own work product, is that correct?

A. Yes.

Q. Dr. Foster, with respect to the portion of the submission of February 22, which you identified as the narrative –

[394] A. The what?

Q. Narrative.

A. Yes.

Q. I think that is the terminology and I assume you mean the textual material of some nine or so pages which precedes the appendices?

A. That's correct.

Q. With respect to that material and with particular reference to the portions alluding to faculty, do I assume correctly that you did not similarly collate data as to faculty?

A. That's correct.

Q. In other words, you made no census as to faculty where teachers are by school or grade level, is that correct?

A. That's correct.

Q. Nor by their skills or specialties by subject or grade level?

A. That's correct.

Q. Nor with respect to the ages of teachers?

A. That's correct.

Q. Nor with respect to their sex?

A. That's correct.

Q. Or experience?

A. That's correct.

Q. Or seniority.

A. That's correct.

[395] Q. Or any variable which might conceivably relate to socio-economic status or role model about which we have talked in the case proper, is that correct?

A. Yes.

Q. Nor indeed as to race. There has been no current race census in which you engaged in connection with the preparation of the narrative.

A. That's correct.

Q. Is it correct then to say that as I think you described it in answer to a question by Mr. Krasicky, that what you were primarily addressing yourself to was what you conceived of as a need for pupil desegregation and that is what the plan primarily deals with?

A. That's correct.

Q. Would it also be correct to say that the portions of the narrative which deal with faculty are what you described earlier as educational as distinguished from legal recommendations or as what we lawyers would call precatory language, that is, suggestions rather than directions?

A. That's true.

MR. SACHS: I have no further questions.

Excuse me, may I ask one question, I'm sorry.

Q. Dr. Foster, would it be correct to say then that the views which you have expressed in the narrative are essentially a [396] reiteration of the views which you previously held and about which to some extent you testified in the case proper?

A. I would want to check that out to make certain but I would guess, well, I would rather not say definitively because I haven't thought of them in that light but I don't know why they wouldn't be.

Q. This did not represent any new input on your part in terms of any study? Presumably as best you can recall it reflects a repetition or reiteration of the point of view which to the extent you were questioned you testified about in trial, is that correct?

A. I would say so, yes.

Q. There is a portion of your narrative about which I neglected to previously ask in which you make certain recommendations about parent - teacher - student councils, et cetera. In connection with that recommendation have you made any inquiry into the legal structure of what might be involved in terms of the policy - making decisions to which you have reference or make reference?

A. I'm not sure I follow you but I made no detailed investigation of the legalities of such procedure if that is your question.

Q. Yes, sir. I take it those recommendations similarly represent a general point of view on your part as to what you would consider educationally desirable?

[397] A. That is correct.

MR. SACHS: That is all. Thank you.

CROSS EXAMINATION BY MR. RITCHIE:

Q. Dr. Foster, at the beginning of your direct examination in response to a question by Mr. Beer, you said that compared to the plan submitted by the Detroit Board of Education this plan worked and it was my understanding from your statement you were addressing yourself to the problem of functionally desegregating the pupils within the school system of the City of Detroit. Was I correct in making such an assumption?

A. I think so. I perceived that as the primary task of the plan.

Q. Mr. Krasicky also asked if this was a sound educational plan in his direct examination and you said yes. I would offer this suggestion to you that the plan you proposed to the Court only addresses itself to the numbers but with regard to the educational plan of Detroit it really makes no basic changes in the number of schools or the curriculum that the students are using and other matters related to the educational plan itself. We are talking about desegregating in terms of numbers in this plan of yours not in terms of the educational plan of Detroit itself.

A. Well, that is true except the desegregation in itself will [398] lead to educational change and certainly I would anticipate change in the educational program as a result of the Plan's adoption.

Q. Were you aware tha- two weeks ago the State of Michigan published a comparative survey of the test course of the various schools in the State of Michigan and on a comparison basis the City of Detroit ran I believe in the lower one percent of the schools in the state? If you have any opinion on it would your plan make any appreciable change in those scores? Do you think it would?

A. I would hope that it would over a period of time. If the plan were accompanied by sound implementation, yes.

Q. Is it not a fact that there are educational problems in Detroit which while they may include the racial problems are also educational problems of deep and long standing which require a good deal to correct?

A. I think so, yes.

Q. Mr. Krasicky asked you a hypothetical question with regard to I believe the constitutionality of the plan, making the assumption that Detroit was an educational island, self - contained surrounded by a sea and you said it would be a sound plan. Now I asked you to look at it realistically as an educational island surrounding by a sea whose suburban community is basically white. Without addressing yourself to the problem [399] of correcting the obligations of the Detroit school system but going up a level in our responsibility to the problems of the state itself, taking your plan and assuming that it is completely effective and results in a school district as you have proposed, would you not have looking at your plan with the suburban communities, the State of Michigan maintaining a plenary school system, namely a school system in Detroit which is identifiable as racially black surrounded by others which are identifiable as racially white?

A. I think that is a legal question.

Q. Would you care to give us an answer, you have on other legal matters. I hear no objection from counsel.

A. Well, I think I have inferred already that Detroit, taken in the context of the metropolitan area, at least technically would be racially identifiable.

Q. Now, with regard to the proposition of the stability of the plan itself, you hoped, you said, that this plan would provide stability. I think we all recognize in the courtroom that to effect an integration problem the element of compulsion is required in this plan and it assumes such a proposition.

Is it not correct and I think you may have stated so that the white flight occurs when middle class whites attempt to avoid the integration experience in the neighborhood schools they live near and they leave. In your [400] direct examination and subsequently you stated that there was the factor of economics, there was the factor of economics that was a restraint. I submit to you

not only is economics a factor but the availability of schools and other neighborhoods to go to is also a factor in white flight, is it not?

A. Yes.

Q. So that in the event there is a factor of instability in this plan the people most likely to leave would be the middle class families and the most prosperous families would remain in the Detroit community.

A. Well, I don't think that is completely so by any manner or means because some people have considerable income. In any city people have a stake in where they are and will not flee in this sort of situation but other factors being equal I would agree with your proposition.

MR. RITCHIE: Thank you. I would have not further questions, your Honor.

THE COURT: Mr. Flannery?

REDIRECT EXAMINATION BY MR. FLANNERY:

Q. Dr. Foster, if for reasons of convenience or for any reason unrelated to racial considerations the kindergarten portion of your plan were omitted or dealt with as in the February 22, [401] submission, rather than as in the proposed amendments which you testified about, in that event, sir, would it still be educationally sound within the constraints of Detroit itself to implement the plan, the principles embodied in your plan to a 1 to 12 basis?

A. I think it would, yes, sir.

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[444] JAMES W. GUTHRIE

was called as a witness by Defendant Detroit Board and being first duly sworn testified as follows:

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DIRECT EXAMINATION BY MR. ROUMELL:

Q. Dr. Guthrie, it is my understanding that you previously testified in this case?

A. That is correct.

Q. Just for a short review would you give us your education, please?

A. My undergraduate, master's degree and doctorate are all from Stanford University in Stanford, California.

Q. Your undergraduate degree, B.A., is in what field?

A. Anthropology, social anthropology.

Q. What does social anthropology encompass?

A. For me at that time it encompassed primarily a study of the behavior and interaction between races.

Q. In the United States?

[445] A. That is correct.

Q. Your M.A. is in education?

A. That's correct.

Q. For the record, will you tell us what your major field was for your Ph.D. and your minor field?

A. My major was educational administration and my minor was sociology and political science.

Q. Have you done post-doctoral studies?

A. Yes, at Harvard University for a year.

Q. Am I correct that was pursuant to an Alfred North Whitehead Postdoctoral Study?

A. Yes.

Q. What was your area of study at that time?

A. At that time I was interested in the questions of social class and race and completed a book entitled "Schools and Inequality."

Q. You mentioned a book called "Schools and Inequality." Am I correct that book has been published by the Massachusetts Institute of Technology Press, 1971?

A. That is correct.

Q. Have you published any other books?

A. I have edited another book and I have authored several articles.

Q. The book called "Schools and Inequality," can you tell us what the general subject matter of that was?

A. The thesis of the volume is that the quality of the school [446] services distributed in this nation is a function of the social class and that could be interpreted as race also in some sections. It is a function of the social class of the child and the quality of the school service the child receives has a bearing on his school performance and his performance in schools subsequent has a bearing on his post-school opportunity.

Q. Doctor Guthrie, am I correct that you have taught at the secondary high school level?

A. Yes.

Q. Have you taught at the elementary level?

A. No.

Q. Your teaching experience is in California, is that correct?

A. That is correct.

Q. What is your present academic position?

A. I am an associate professor in the School of Education at the University of California at Berkeley where I teach courses in logic of research and in those courses which deal with governments and also some courses which deal with racial desegregation.

Q. Dr. Guthrie, have you served as a consultant to any governmental agencies?

A. I have served as a consultant to the United State Office of Education, to the Secretary of the Department of Health, [447] Education and Welfare, to state legislatures in approximately five or six states, to the governors of three states.

Q. Would you name those three states, please?

A. Florida, New York and California.

Q. Did you have a position with the New York State Education Commission?

A. I was and still in some sense serve as its deputy director.

Q. What is the function of that commission?

A. That commission was charged by the legislature and the governor of the state with studying the quality cost of financing elementary and secondary education in the State of New York.

Q. Does that include the problems of race?

A. It did.

(A vita of Dr. Guthrie was marked Defendants' Exhibit C-9 by the reporter.)

MR. ROUMELL: I mark Defendants' Exhibit C-9, which is an updated resume of the qualifications of Dr. Guthrie, and I offer it and also Dr. Guthrie as an expert.

MR. FLANNERY: In what?

MR. KRASICKY: It would be helpful if there was an offer of what Mr. Roumell hopes to show through this witness.

MR. ROUMELL: An expert in education planning and an expert in desegregation.

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[454]...

Q. Yes, very briefly. Now, let me ask you this. It part of it because of patterns of discrimination?

A. In my mind that is part of the explanation, a large part.

Q. In terms of black and white would it be fair to say that you have found low SES among whites?

[455] A. Without any question. Most of the poor people in this nation are still white in absolute terms.

Q. Have you found high SES among black students?

A. Yes, that is correct. There are some of those.

Q. Would that be the middle class of black?

A. Middle or above in some instances, rare instances.

Q. Would it be fair to say that a number of black children are poor and have low SES for that reason?

A. The large majority of them are poor and would be characterized as being low SES.

Q. Doctor, I would like to explore another term I have heard. I have heard the term "racial isolation." Have you heard that term before?

A. Yes, I have.

Q. Have you heard that term in regard to education among our public school children?

A. Yes, I have.

Q. When I speak here on education on this record I am talking about primary and secondary grades. Could you explain what that term means?

A. Racial isolation refers to the degree to which a child, regardless of his own race, goes to school only with members of his own race.

Q. Can you give us some examples?

[456] A. An all-white school or all-black school, either of which could be characterized as being a situation where there is racial isolation.

Q. Suppose, Doctor, we have a school that 80 percent white and 20 percent black are contained in it. Would you consider that a racially isolated situation?

A. No, I would not. Those percentages approximate the proportion of black and white people in this nation.

Q. Is it for that reason you state it is not racially isolated?

A. That is correct.

Q. Suppose a black child going to a school that has 90 percent black – would you consider that racially- isolated?

A. I would not consider it racially-isolated. I would begin to consider it racially-identifiable perhaps – excuse me – it was 90 percent black?

Q. Yes.

A. I'm sorry.

Q. What did you think I said?

A. I was thinking 90 percent white. Well, that begins to be racially isolated in my eyes. A black child who sees hinself in a school which is 90 percent black must have some understanding of the fact that that is out of proportion to his number in this society. He must begin to get a feeling there is something different about that school and about this society [457] at large.

Q. Let me ask you would he get that feeling if it was 75 percent black?

A. My suspicion is that he also would still have that feeling. It is complicated and I don't know where to draw the line exactly between 90 percent black and 75 percent black, but still when one considers the fact that some 11 or 12 or 13 percent of all of the people in the nation are black if that child should see himself in a school which is 75 percent black, acknowledging there are some white students there, but 75 percent black, he must begin to think why is it my school is that way? What has society done that has placed me in this situation? What is there about me that I should be with so many other black children in such a low proportion relatively of white children?

Q. What about 65 percent, would you have the same feeling?

A. I would have the feeling. Anytime one begins to move beyond the proportion of blacks in society, beyond that the black child must begin to wonder what kind of factors are in operation which are aggregating him there in a sense in a disproportionate way.

Q. And have you ever heard the term "tipping point"?

A. Yes.

Q. What does that term mean to you?

[458] A. It is asserted to be that percentage point after which the – percentage point between the proportion of black and white after which when the number of blacks exceed that point whites begin to leave.

Q. Where do you think that point is?

A. I would be most reluctant to be specific about it. I would be willing to place it in a band.

Q. Give us the band.

A. Somewhere between 35 and 50 or 55 percent black. When a school is more than that, then somewhere in that band whites become fearful for some rational and some irrational reasons and when can they leave.

Q. Doctor, you were discussing the black child in a 65 percent black school and a 75 percent black school perceiving that his school is not in keeping with the population in society?

A. That's correct.

Q. Now, where would he get the conception that society was placing him in isolation?

A. In order for him to get that conception he has to have two opposing pieces of information constantly or sometimes crossing his mind. One set of information is that he goes to school with children who are primarily black or lives in a neighborhood which is primarily black, yet his picture of the world which is presented to him by the newspapers, by television, by [459] advertising, is that it is primarily a white world. Yet he sees himself living in almost totally or a proportionately black world.

He has two conflicting pieces of information crossing his mind. Also, if he has the ability to travel at all, he will see outside of his neighborhood that it is a white world, particularly if he should get out to the suburbs he will see it is a non-black world out there.

Q. Are you familiar with the television program called "Room 222"?

A. I have watched it and I have watched my children watching it.

Q. Does that program depict an American high school do you recall?

A. It attempts to depict an American high school, a typical American high school.

MR. FLANNERY: I'm sorry, I must apologize. I missed the name of the program.

MR. ROUMELL: "Room 222," Friday night, Channel 4.

MR. KRASICKY: You haven't missed anything.

Q. (By Mr. Roumell) Do you have any idea how that nationally-televised TV program – what numbers, based on your observation on the TV screen, show, are black in that school?

A. Well, I do for a strange reason. Apparently in the mind's eye of the producer of that show the typical American high school has a minority proportion of black students in it, so [460] about that high school you see 10 or 15 or 20 percent black students. That came to my attention because my own children, who go to

school in Berkeley, California, where they see 40 percent of the students around them being black – I remember one of my children saying, "Look, there aren't any black children in that school. What's wrong with it." On television.

Q. ,And in the schools where your children go there is 40 percent white?

A. 40 percent white and 40 percent black.

Q. And in your area are also people of Spanish surnames?

A. Yes, an Asians.

Q. Asiatic?

A. Yes.

Q. Americans of Asiatic background?

A. Yes.

Q. Is this the type of TV program that you are speaking of that black children see or could see?

A. They certainly could see it. I imagine a large absolute number do see it.

Q. Dr. Guthrie, have you had an opportunity to examine the plan presented by the Plaintiffs to the Court?

A. Yes, I have.

Q. I show you what has been marked and received as PC-2 presented by the Plaintiffs. Is that the plan you have seen?

[461] A. This is the plan I have seen.

Q. Dr. Guthrie, is it correct my office sent you a copy of that plan about a week or 10 days ago?

A. That is correct. I received it approximately a week ago.

Q. You have examined that plan?

A. That is correct, I have read it.

Q. Today is it correct that my office advised you of some changes that were made in the plan?

A. That is right. I understand that the Plaintiffs' have suggested some changes or made changes in it.

Q. Dr. Guthrie, would you recommend to this honorable Court that it should adopt this plan for the City of Detroit?

A. I would not.

Q. Would you tell the Court why?

A. I believe that there are substantially better educational alternatives available to the Court. I believe that this plan, should it be implemented, has the possibility of educational disadvantage for the children in Detroit. That is, it involves risk for them. The combination of those two events, two conditions, lead me to believe that this plan is not a worthy one.

Q. Could you be specific and tell me what in your judgement is objectionable to the plan?

A. The objectionable parts are 1, the instability upon which it[462] is based in my view.

Q. Would you explain that for the Court, please?

A. Yes. If the effort is to eliminate a segregated school system for whatever reason, if that is the intent then it is my belief that this will not eliminate a segregated school system, but rather will lead only to greater segregation in the City of Detroit.

Q. Would you explain what you mean by that, please?

A. Yes. Certainly starting already, perhaps starting already with the greater assuredness should such a desegregation plan be announced, and every year thereafter when it is implemented, my prediction would be that the number of white persons residing in the City of Detroit and the number of white children available to attend its schools would decrease. I based that prediction on the behavior of whites in other desegregated situations, desegregating situations, primarily in the South but also in the North of this nation.

When faced with the possibility that their children will be attending schools which have a large proportion of blacks and whites, frequently, very frequently, they will leave. Now, in part that is a consequence of racial intolerance, racial prejudice in substantial part. There are also some real fears, that is realistic fears, of whites in that situation. For example, it has been a long tradition[463] in this nation to allocate a lower proportion of our school resources to schools which are predominantly black and whites fear that if the school becomes characterized as being black the quality of school service will depreciate in it.

I say that is a realistic fear because frequently it has happened. Those individuals who are in a position to make decisions about such things frequently when a school is in some heavy proportion black will discriminate in the allocation of the resources to it.

Q. Dr. Guthrie, would a 65 percent school, a school having 65 percent black students, be considered a black school as you are considering the term?

A. Yes. I believe so.

Q. Would a system having 65 percent black in it be considered a black system?

A. I believe that the white parents living in it would have the same fears when it was 65 percent black as if it were 90 percent. For them it is becoming a black system. Again I acknowledge the ratio of prejudice involved.

I also want to emphasize the point that knowing that it is becoming more than 50 percent black or it is becoming a heavy percent black, white parents fear "Where will the white teachers go? Where will the money come from to make it run now that we are being discriminated against?"

[464] Making these calculations in their own mind, they leave for a setting where they think the quality of schools is better insured, namely the suburbs.

So an objection I have to this plan is that if implemented at best, at best – and I fear this wouldn't even occur – but at best it would be a short-run solution, at very best. At worst – and I think more likely you would have a segregated, a more strongly segregated situation after one, two, three or four years.

Q. When would this flight begin, in your opinion?

A. As I tried to make clear, I suspect that simply given the publicity that accompanies a court case such as this that the white flight may have been intensified over that which it was before the court case.

Should a Detroit based desegregation decision be given it is my prediction that that in itself would intensify the white flight and then upon implementation of the plan it perhaps would continue.

Q. In the white flight you are speaking of, in terms of SES, which you spoke of before, what group of white parents or white families would you expect to flee?

A. It is the higher social and economic status families who flee first for several reasons. Most frequently they have – they are the ones that have the economic resources which enable them[465] to flee. Secondly, these are frequently the people who have the most concern for the quality of their children's schooling, and they flee. The poorer parents – incidently, the ones who social science findings have revealed to be the most prejudiced and intolerant typically – poorer families don't have the means as frequently to flee even when they want to, and so they are the ones who are left in the city, the whites left in the city.

Q. So then based upon what you told the Court, the whites who are left in the city would produce the ingredients of a poor SES mix for the black students and the white students left?

A. That is correct. Not only would you not be able to have the social and economic advantages of racial desegregation in that instance, you are also stirring a pot which has substantially more volatility to it. You are putting students together for whom racial intolerance is typically the highest and so you are running the risk at least in the initial years of such desegregation of increased student violence in such schools, increased over that which it would be if you could desegregate across social economic status boundaries.

Q. What effect would it have in putting a number of low or medium low white SES students into a school where the black students range from middle SES on top the scale? What effect would it have on the achievement of the white students?

[466] A. On the white students?

Q. Yes.

A. My prediction would be that probably their school achievement would be elevated.

Q. What about black children?

A. There is so little evidence on this is just raw speculation on on my part now because that kind of desegregation is so infrequent as almost never to have been studied. But if the same

principles apply as apply when the proportions are reversed, then the achievement of the black students in that situation should not suffer. It should maintain the same level.

Q. What would be the effect of putting in low white SES students with low black SES students, achievement students?

A. I would expect achievement not to change and possibly given a greater possibility of friction and tension between those students, achievement might suffer.

Q. Would it be your position, Dr. Guthrie, that in any desegregation one must consider a mixture of SES?

A. In any desegregation decision which is concerned about performance of children and what they learn and what schools do for them I think it is imperative to consider social and economic circumstances of the students involved. Not to do so is to make an assumption that there is some magic about a white person sitting next to a black person. It is to make an[467] assumption that black people can learn simply by being in close proximity to whites by some magical osmotic process for which there is no evidence. Whereas, if you consider that there can be a transfer of values across SES boundaries the revitalization of a school environment across SES boundaries, that does give us some explanatory modal for what happens.

It enables us to explain why it is a low SES black child can learn more in an integrated environment where he is placed near high SES whites.

Q. For that matter, near high SES blacks?

A. That's right. I agree to that, but there may be some other advantages that are not gained in that situation. That is that one doesn't necessarily learn greater racial tolerance in the situation you have just described.

Q. We were talking about stability and the lack of stability in the Plaintiffs' plan. Assuming that we have a system that is now 65 percent black and we have a plan that puts 65 percent black in every school in the system and assuming that we have about 60 or 70 suburban school districts with some exceptions that are predominantly white, what in your opinion would be the view of the metropolitan community as to the racial composition of the Detroit System? Would it be considered a black or white system or mixed?

A. I would judge, I feel safe in judging that a typical perception[468] of Detroit is that it is a black system.

Q. If I mention Washington, D.C., to you, educationally, would you call that a white or black system?

A. That is a black system.

Q. Is that because of the number of black students?

A. The proportion of white students in Washington, D.C. I believe now is somewhere in the order of the magnitude of 15 percent, 85 percent black.

Q. You mentioned stability as one of the objections you had to Plaintiffs' plan. Do you have any objection to it from an educational standpoint?

A. I do have the objection as we have discussed peripherally that it doesn't maximize the educational advantages of the SES integration. On the contrary, it runs the risk of the worst kind of SES integration, that is, low SES whites with low SES blacks.

In a situation as I said before like that it would be extraordinarily volatile, dangerous physically for both black and white children and as a consequence of the tensions created in such situation can result in a lowering or decrease in the achievement of students.

Q. What effect would it have, in your opinion, on achievement?

A. The Plaintiffs' plan, what effect would it have on achievement?

Q. Yes.

[469] A. It is difficult — it has no possibility, very low probability of increasing achievement for either black or white students, and runs the risk of decreasing the achievement of both.

Q. Do you find any other objections to the plan? You mentioned stability, education and achievement.

A. A third objection I have, or another objection, is purely a practical one. Desegregation is what a sociologist calls a systemwide change. You cannot simply desegregate and expect nothing else to change in that system. The way in which you employ people, the way in which you allocate resources, the way

in which you make decisions, the way in which the board members and superintendent interact, everything else in the district is touched when you desegregate it.

There is the high probability of tremendous turmoil. Just when one considers the logistics of it, when one considers the administrative decisions that had to take place, the human time and effort and money involved in a desegregation decision of this magnitude, to do it once, to desegregate in the City of Detroit counts for a tremendous expenditure of effort and commotion. Having done that, if the whites flee, which is predictable, then you have a segregated or more segregated system, and then you say, "Well, in order to desegregate we must integrate with the surrounding metropolitan community." To do that again and call forth all [470] that administrative effort again seems to me to be wasteful at best and perhaps ridiculous at the extreme, and unnecessary.

Q. We talk about perception of the child – do you believe that the Plaintiffs' plan which gives basically a 65-35 ratio proportion and in some cases as high as 75 percent, would these make these schools racially identifiable, in your opinion?

A. Yes, it would.

Q. Doctor, in reading your previous testimony do I understand that for Detroit you favor a metropolitan plan of desegregation?

A. Yes, I do.

Q. Would you explain to the Court why?

A. I believe that it will have the greatest stability over time. That is, it has the greatest possibility of maximizing racial desegregation over time. It will last longer for one. Secondly, and perhaps my largest concern, it seems to me it will operate to the educational advantage of all the children involved both black and white because it will involve the possibility of desegregation across socio-economic boundaries. So we can look forward to a lessening of racial tolerance on the part of both black and white children, and we can look forward to an improvement in the academic performance of the Low SES black child.

I favor the metropolitan solution because [471] – well, this is not exactly an argument in favor of it so much as it balances out the objections to not doing it. It is no more costly. If you are

going to desegregate it doesn't matter in terms of expense or effort whether or not you desegregate within the boundaries of the city or in the surrounding areas, as long as you are going to do it. It is only one cost. Why not gather the added advantages of doing it in a metropolitan sense.

Q. You mention cost. Would any decision have a certain public relations consideration, would you say?

A. Could you be a little more specific about public relations consideration?

Q. Let me ask you this: I believe you stated to the Court a very few minutes ago that you found objection to the Plaintiffs' plan because of the administrative problems. I believe that was your testimony and you explained it. Let me ask you this: Suppose the Court was to order Plaintiffs' plan to be implemented next fall, for example, and then the subsequent fall ordered a metropolitan plan. Would you favor such an approach?

A. No, I would not.

Q. Would you tell the Court why, please?

A. Well, in addition to the repetitive administrative costs and turmoil which I already discussed and which I would find undesirable, in addition to that you got the cost to the [472] children themselves and their parents. Any time you uproot children and move them out of the norm, out of an expected pattern of schooling, you are disturbing all kinds of relationships between parents and school, between students and schools and between students and students. A child who moves into a school makes a new group of friends, begins to find the stability that they afford him and the comfort that that gives him such that he or she can focus on his or her schoolwork and then the subsequent year in an unexpected pattern – one where the child is uprooted and placed in another new social environment – the child must get used to it and the parent has to get used to it, and whatever relationship has been built up between parent and school must now be built up again. So in my mind it is excessive dislocation that is necessary in a two-step desegregation procedure such as you just illustrated.

Q. Educationally what effect might that have on the child if we did it by two steps?

A. Well, in the first year of it within the boundaries of Detroit as I have already discussed it is not likely that in those circumstances you will get the optimum SES desegregation necessary for learning.

So in the first year of such a two-step operation it is possible that achievement will suffer. It is [473] possible. It is highly probable that the amount of conflict will be intensified if one would move immediately to a metropolitan solution.

Q. Explain to the Court what you mean.

A. By conflict, I mean both students and students, again banking on my knowledge of the levels of prejudice typically embedded in both low SES blacks and whites that are going to run a greater risk of conflict when placing them in contact with one another than when you integrate over SES boundaries.

Q. Do you see any other disadvantage to the children in a two-step process?

A. No, not that I don't think we have touched upon in one sense or another already.

Q. Would it be your opinion, based upon your testimony, that just placing students number by number has any educational advantage?

A. None that has ever been demonstrated.

Q. Is this your opinion based upon your testimony that in fact placing students number by number may have educational disadvantages?

A. Within the context of Detroit it would appear to have or would appear to run the grave risk of educational disadvantage.

Q. Yesterday Dr. Gordon Foster suggested that while moving a black child from a situation that is 45 percent black to one that is [474] 75 percent black might have disadvantages, that would be offset by a positive effect from knowing that all schools were the same ratio. Would you agree with that?

A. No.

MR. FLANNERY: I object, may it please the Court. I may be in error. I don't recall that to be an entirely accurate characterization of Dr. Foster's testimony. In any event, whether or not I am

wrong, I think it would be sounder to proceed with the exact testimony if Mr. Roumell would agree to do so.

MR. ROUMELL: I haven't seen the testimony, but I thought that was a fair summary of what he said.

THE COURT: Well, you may proceed.

Q. (By Mr. Roumell) Would you answer the question, please.

A. I am now to assume –

Q. (Interposing) Let's do it this way: Moving a black child from a situation that is 45 percent black to one that is 70 percent black or 65 percent black might have disadvantages. Would that be offset by a positive effect from the child knowing that every school in the district had the same approximate racial percentage?

MR. FLANNERY: May I make my objection formally for the record, because my recollection now is that Dr. Foster was asked that question in the context of the racial identifiability [475] of the school and the perception of the student moving. I apologize to the Court. I just don't recall the relative merits and demerits to the child on the question. I just want to make that for the record.

THE COURT: Unfortunately, I can't say the jury will remember more accurately.

MR. ROUMELL: Let's say the Judge will.

THE COURT: I don't think it is of that much consequence. I think what you are getting at is the same thing you asked Dr. Foster. I think the crux of the matter was your expression or what is sought now is your opinion as to whether the perception of a child, a black child going from a 45 percent black situation to a 75 black situation would be improved by his knowledge that everybody else in the system was finding themselves in the same situation. So, despite the fact he was moving from a minority situation into a majority situation, he would in effect be more than reassured by the knowledge that everybody else found himself in the same position.

A. I find that very strange logic in at least two ways. One, it assumes that the child has knowledge that everyone else is in the same situation and to me that is debatable that children do carry

that knowledge with them. But, secondly, I think that I could pursue that line of reasoning to say [476] that if the black child would move from a point where it was 40 percent black and he was moved to a place where it was 100 percent black he would find comfort in saying, "Well, everyone is the same as I am." I don't believe that either.

He would find himself in a racially-identifiable school. It's a black school. He must be torn between the tension of knowing that that is a school which is a majority black and society or the surrounding area isn't. What is he to say to himself, "It's all right that they grouped me this way. It's all right because they grouped other people that way." I personally don't find that persuasive, nor logical.

Q. How about moving a black child from a 90 percent black school to a 75 percent black school? Would he find comfort in the fact – would your answer be the same?

A. My answer would substantially be the same. If he should find comfort in that he would have to have an extraordinarily sensitively calibrated comfort meter inside of him.

Q. Dr. Guthrie, you are from Berkeley, California, is that correct?

A. Most people say they can tell. Yes, I am.

Q. Have you spent time in the Detroit area?

A. Yes I have. Well, I assume you don't mean in the vernacular.

Q. I don't mean prison time.

THE COURT: Fortunately, he didn't say "served time."

[477] Q. The jail is overcrowded anyway.

A. I would not like to add to that burden. The specifics of it are that since 1968 I have either been in the Detroit area conducting research or I have appeared here in connection with this court case which I think has gone on for one or more years.

Q. Would you say that in the last year you have spent approximately two months' time in this area?

A. I would say that is a conservative estimate; if one should calculate the number of days I have been here it would be 60 or more. My wife could tell you precisely.

Q. You have been in Grosse Pointe in connection with your research?

A. Yes, I have been in Grosse Pointe. I have been in several suburbs.

Q. Could you name them, please?

A. Inkster, Grosse Pointe, Bloomfield Hills, a place – Livonia – is that one?

Q. Yes. Inkster has a large proportion of black students, is that correct?

A. It appeared to me to be that way when I was there.

Q. Did you find that Grosse Pointe and Livonia had a very high percentage, in fact, all white?

A. That is my perception.

MR. ROUMELL: Thank you very much.

[478] THE COURT: May I inquire of counsel about how much time they think they will need for cross-examination?

MR. FLANNERY: Certainly not more than 30 minutes, your Honor.

THE COURT: Mr. Krasicky?

MR. KRASICKY: I would think 30 minutes.

THE COURT: Mr. Ritchie?

MR. RITCHIE: 10 minutes will be more than enough, your Honor.

MR. ROUMELL: Our plane leaves at 5:40, your Honor.

THE COURT: I have some other matters to attend to. I would think we could resume at 2:00 and allow me time to take care of those matters and provide the good Doctor with an opportunity to have a decent lunch so he can subject himself or permit himself to be subjected to the cross-examination here and still finish in good time. I don't propose and I don't suspect Plaintiffs' propose to call any other witnesses today?

MR. ROUMELL: I have one available in the event the Court wishes. Frankly, if this gentleman takes the rest of the day we won't but we have one available in the courtroom to conserve the Court's time.

THE COURT: Not from out of state?

[478-A] MR. ROUMELL: No.

THE COURT: We will be in recess until 2:00 o'clock.

(The hearing of the cause was adjourned until 2:00 o'clock P.M.)

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Detroit, Michigan
Friday, March 17, 1972
2:00 o'clock P.M.

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[493]...

A. The tipping point concept is a band that slips back and forth. To me it is important to consider in terms of a desire to achieve a stable solution, whatever it is. That is why I would consider the tipping point concept.

Q. Yes, but the question is am I correct in understanding that that affects your thinking of how one goes about desegregation?

A. No. If I understand you, not only would I have to take into account how one goes about desegregating, but I would want to know what one got at the end.

Q. I understand, but if the tipping point factor could not be controlled as it can be if I understood your earlier testimony in a metropolitan situation as that obtaining in Detroit, if for any reason the tipping point factor could not be controlled would you maintain racially segregated schools?

A. I would not maintain affirmative action, that is, I would not retain racially segregated schools by affirmative action. [494] Neither would I move to desegregate them unless I thought I could accomplish socio-economic integration at the same time.

Q. Doctor, would you agree with the following statement:

"Although the question of housing is beyond the scope of the Commission's charge, we are well aware that the separation of racial and ethnic groups in cities and suburbs is attributable to many complex factors, including housing policies and practices by private as well as public agencies. In order for our society to achieve true integration many institutions in addition to schools will have to be involved.

"However, those in positions of educational leadership must exercise prompt initiative to achieve the goals of integrated education. The schools cannot wait for other social, business and political forces to respond first. They have the best opportunity to make a contriubtion here and now to desegregation and integration of our society."

MR. ROUMELL: From where do you read?

A. From the Fleischman Commission's Report, Chapter 4, I believe.

ROUMELL: I always dreamt of being able [495] to do that myself, your Honor.

Q. You recognize the prose, doctor?

A. I wrote it.

Q. I thought so.

A. I recognize it, I believe. I agree with it, and I wish "education" and "educational leaders" to be construed there not in the narrow sense of a school district by itself but of educational leadership statewide or nationally.

Q. Thank you. Without troubling you to listen to a rereading —

A. There are a few things more painful than listening to one's own prose.

Q. Would you agree, Doctor, that it is critically important for school desegregation to begin at the earliest possible opportunity?

A. Yes, I honestly do believe that. Excuse me. Could I ask for a clarification of that question? By "earliest possible opportunity" I meant in terms of the age of the child.

Q. So did I.

A. All right.

Q. Dr. Guthrie, may I ask you if you have Chapter 4 of your report clearly enough in mind, to save the Court's time and what very little I have left may I ask you whether you unqualifiedly endorse the findings and conclusions of that chapter?

A. With one caveat I believe I do. There are some commission [496] members' dissents within the chapter which have been

added since my day-to-day participation with that commission and I am not in favor of them but I do identify myself with the majority report.

Q. Do you recall, sir, whether those dissenting portions appeared in the advance copy of Chapter 4 and 5?

A. I do not believe they do.

Q. If they do not,do you agree unqualifiedly with Chapter 4?

A. Well, I certainly agree with it. The word "unqualifiedly" leaves me as it would leave you, unsettled.

Q. I am not seeking to trap you, sir. Is there anything that comes to mind having participated in its authorship, as I understand you did? Is there anything that comes to mind that you do not agree with?

A. Nothing comes to mind at the moment, no.

Q. From the standpoint of educational administration, Dr. Guthrie, would you recommend a metropolitan form of organization in the Detroit area even if that area were racially homogeneous?

A. That is to say the suburbs bore the same proportion of blacks and whites as central city?

Q. Yes.

A. For certain administrative purposes I would. That is, I would counsel the centralization of finance, for example, or the centralization of revenue generation and some other [497] decisions. I would counsel they be decentralized. My point is that one needs to separate some administrative functions and some ought to be put in a metropolitan context and others need not be or perhaps even are best not considered in a metropolitan concept.

Q. Dr. Guthrie, you testified yourself this morning you had familiarized yourself with Plaintiffs' plan identified as PC-2. Do you have it there?

A. Yes, I do.

Q. May I have it?

A. Yes.

(A document was handed to counsel.)

Q. Have you had an opportunity, Dr. Guthrie, from the educational soundness standpoint, particularly with educational administration to inquire carefully into the details of Dr. Foster's proposals?

A. Have I had time to inquire as to the educational soundness of the details?

Q. That is not clear enough. If I may rephrase the question, I am speaking particularly with respect to the feasibility aspects. That is, who is transported where, how schools are grade structured – matters you did not testify to this morning.

A. All right.

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[511]...

Q. Are you aware Dr. Foster gave us an opinion that he suggested between 5 and 10 per cent?

A. I would say in all due respect that opinion would be just as false as any I would make up. I don't know how he could do that.

Q. Would you disagree?

A. I would object to his making any unqualified prediction.

Q. Surely there have been many segregation plans adopted across the country pursuant to court orders and there has been experience about people leaving.

A. If Dr. Foster could then show me what analyses he had done on that I would delighted to see them but I haven't seen them and I don't know that he published them anywhere. I would be very interested in knowing what empirical analysis Dr. Foster has conducted.

A. Let's assume, as we did yesterday with Dr. Foster, that the school district for the City of Detroit were an island completely surrounded by a body of water. Let's assume this trial court made a finding that it did relative to de jure segregation; would you recommend that the Court adopt [512] plaintiffs' plan?

A. I would recommend that the Court consider alternative plans. It's not clear to me that plaintiffs' plan is the best under those conditions nor might I add is it clear to me that it is the

worst, but I do not think that under the hypothetical circumstances you have outlined that the Court has been presented with the full range of alternatives.

Q. Do you think it is possible to desegregate the Detroit school system within the boundaries of the school district?

A. Do I think it is possible to desegregate it?

Q. Yes.

A. Not according to any educationally useful definition of desegregation.

Q. Let's assume it is the island completely surrounded by water so there are no suburbs to look to, are you suggesting we might throw up our hands and do nothing?

A. Sir, I did not say that.

Q. I'm asking you is it possible, I'm not saying it would be the best solution, I am asking could it be done within the boundaries of the Detroit school district, in your opinion?

A. It would be possible to place 65 per cent black children and 35 per cent white children in every school in this district; about that I have little doubt. If you ask me – and I purport to be an educational witness not a transportation witness – if [513] you ask me would that opt to the educational advantage of children in Detroit it's not clear that it would relative to other or alternative actions which might be available.

Q. I believe in answer to Mr. Flannery you stated you were in favor of a metropolitan remedy. Speaking generally, what are you in favor of?

A. Speaking generally what am I in favor of?

Q. Yes, as a solution to this problem.

A. I'm in favor of a metropolitan desegregation solution.

Q. What does that mean to you?

A. That means to me carefully constructing a school attendance pattern between Detroit and its surrounding suburbs, for lack of a better descriptive term, such that one would achieve a socio-economic mix which would place middle and upper socio-economic status children in the majority.

Q. What would be the parameters of the area?

A. Parameters, that is a statistical concept. Is that how you chose to use it?

Q. I am asking for the boundary.

A. You want to know the perimeter around it?

Q. Yes.

A. I don't know. Inside of me I begin to get a little upset with bus rides or any kind of transportation, be it walking even, which gets much beyond a half hour or forty minutes each way. [514] I say that to the Court kind of as a parent or something like that. I have no evidence about it.

Q. When you say you are upset do you think it makes good educational sense to leave the child on the bus longer than a half hour?

A. Good educational sense compared to what? Compared to not sending the child to school at all, for example, yes, I think it makes sense to have him ride the bus more than a half hour.

Q. We have a compulsory education law, children have to go to school. That isn't what I meant.

A. I understand but you say does it make sense, all of these things are relative. Does it make sense compared to sending him to a terrible school? I would rather he rode the bus two hours each way.

Q. Can you give us the boundaries of a metropolitan area?

MR. ROUMELL: Your Honor, are we going into the metropolitan plan? I notice Mr. Krasicky was talking about an island with water around it and I know there is water around the lower peninsula which included the metropolitan area. If we are I am willing to do that right now.

MR. KRASICKY: He was asked whether he was in favor of a metropolitan plan and I am trying to find out what he is in favor of. I think we are entitled to know. I [515] don't plan to go into any plans filed with the Court.

THE COURT: If he has any idea about it. I don't assume you have made a study?

A. No, sir.

THE COURT: You haven't prepared yourself to answer that.

A. No, I have not specifically, not in the Detroit metropolitan area. I have in New York but I don't find that relevant here.

Q. Assuming the Court were to approve some kind of metropolitan plan, how long would it take to draw it if value were given for SES?

A. That is how long would it take to conduct the analyses necessary to fix boundaries?

Q. Yes.

A. I would judge again from my experience in New York approximately three months. That is for a small team of careful analysts such as I am sure exist in the area.

Q. Dr. Guthrie, you gave some reasons why the Court should not adopt this plan as an interim plan if it may adopt a metropolitan plan. One of the reasons you gave was the tremendous turmoil administratively–

A. If I may borrow a term, sir, excessive turmoil.

Q. I wrote down tremendous turmoil, trying to write what you said. If the Court were to adopt a metropolitan plan there [516] would also be turmoil, would there not?

A. That is why I attempted to replace my statement to excessive turmoil. There will be "turmoil" in any desegregation decision, any desegregation action. It's tumultous.

Q. Whether it is done on intra-district or a metropolitan basis?

A. That is my belief.

Q. Let's assume the Court adopts some kind of a metropolitan plan, in your opinion, would there be flight from the metropolitan area?

A. Probably less. Where can one go. There are a limited number of prople who have national mobility at their fingertips.

Q. You are suggesting if the Court desegregates an area of the size of the City of Detroit that there would be flight in considerable number but if the Court were to adopt a plan larger than that there would be less flight, is this what you are saying?

A. Yes, and I find that almost no inconsistency in so saying.

Q. Aren't the high SES people going to flee?

A. I say the number of individuals who have such mobility at their fingertips is very limited that they can switch their jobs from place to place, that they can uproot their family completely from one section of the country to another. The number of people who are willing to take the psychological risk in moving such distances over a matter such as this, in [517] my opinion is small.

Q. Although you suggest if the Court approve the intra-district plan only, there will be such flight?

A. Sir, that hardly calls for national mobility. That could make a move as small as five miles.

Q. I'm asking for a simple yes or no answer.

A. I regret that your question doesn't lend itself to such.

Q. Your testimony is that if the Court approves an intra-district plan only that this will bring about flight from Detroit?

A. I say it will increase the possibility of whites moving from this city.

Q. But you can't tell us in your judgment what percentages are involved?

A. No, I would not be willing to make such a prediction.

Q. You also suggested that the flight will occur over a period of years?

A. I do. That is, not everyone can arrange to sell his house in a day.

MR. KRASICKY: Thank you.

THE COURT: Mr. Ritchie?

CROSS EXAMINATION BY MR. RITCHIE:

Q. Dr. Guthrie, in the Detroit system there are some 25 or 30 [518] schools with a ratio proportion of between 25 and 50 per cent black. Do you believe that changing the racial situation or balance in these schools to a balance where there would be 70 per cent black would have a negative or positive effect on these schools?

A. If in moving from 25 to 50 per cent black to 70 per cent black, if one altered the SES nature of the school, that is, if one moved to a situation where there were a larger concentration of higher SES blacks it might actually, it could improve the achievement of the black children.

However, I think the probability is high that in increasing the proportion of blacks in the school you would also increase the proportion of children from low income families. If that were done my belief is that at best the achievement of the performance of those students would remain stable. At worst it could go down. There is a risk that it would decrease.

Q. Thank you. On the subject of the allocation of educational resources to a child, it was suggested last night and I don't know if it has ever been suggested in this court before but it may, assuming we have formal hearings on a metropolitan plan, that the solution to I think what we all agree are the admitted achievement problems in the Detroit Public School System could be solved not by the imposition of a so-called [519] court-forced busing plan on the school system but in the alternative by the sole delivery of academic resources through increased Federal funding alone; do you, based on your knowledge as an educator and expert and your knowledge of Detroit believe that the mere allocation of substantial funds of money for whatever academic purpose the school board would see fit to use, would that solve the problems of Detroit?

Let me give you this as further assistance in answering that question: There are 287,000 students in Detroit in the first class school district of which you know 65 per cent are black and of which I understand and certainly other counsel here can correct me if I'm wrong in my figure of some 68,000 based on state tests, perform on the very lowest level. I think the figure was given to me on a performance level of between 80 and 85, some 68,000 students approximately in Detroit; of the 287,000 who performed on that level we have schools I know in my own region – I'm a board member in Region 7, where 65 of the students in the school have a performance on that level of 80 to 85, where the state and national norms are upward of slightly over 100.

Would the mere delivery of services alone solve the problem?

A. I think the probability that it would is small.

MR. RITCHIE: Thank you, Doctor.

[520] MR. ROUMELL: No questions, your Honor.

THE COURT: I just have a matter of curiosity and perhaps you can satisfy it. Have you seen or have you had an opportunity to become familiar with or perhaps you had some part in the preparation of follow-up studies and analyses made based on data collected by or supplied to the Coleman Commission which recently was publicized?

A. Yes, I believe you refer to the book edited by Mostheller and Daniel Moynihan.

THE COURT: A Random House publication?

A. Yes.

THE COURT: Is that available now?

A. Yes.

COURT: How long has it been available?

A. To reviewers for approximately two weeks.

THE COURT: Have you read it?

A. Yes, I have.

THE COURT: In your estimation does that in any way shake the general conclusions reached by the so-called Coleman Commission?

A. I believe that it shakes one conclusion greatly and I believe that it does not reaffirm another one at all even though it claims to. Let me be specific. The first one that I will comment upon is perhaps at least relevant to the Court, but [521] it may be relevant so I will repeat it.

One of the Coleman report findings or assertions is that the quality of school services measured typically in the amount of money spent per child does not influence the performance of the child independent of the social class. The criticisms of that findings in the Coleman report I believe still hold even after these reanalyses, despite what those authors say, Mostheller and Moynihan. I do not believe that finding has been reaffirmed and though if it becomes important I would try to explain why in detail.

What I think the relevant finding is that has been exploded by their reanalysis, the Coleman report held that the racial

composition of a child's classroom had a strong effect on a child's achievement and they published tables to try and demonstrate that.

Subsequently it has become more evident or a more likely explanation of that finding is that it is a social class effect and not a racial effect. That is the same data can be reinterpreted as a social class explanation of the child's added achievement and that explanation is more verifiable, appears to be more probable than the racial.

THE COURT: Thank you. I have nothing further.

MR. FLANNERY: May I, on the basis of that, your Honor?

[522] THE COURT: Yes.

RECROSS EXAMINATION BY MR. FLANNERY:

Q. Just two questions; Dr. Guthrie, if I understood your last answer to Judge Roth's question –social class, if you will permit a layman's characterization seems to be something more determinative as a variable than race, is that correct?

A. A more powerful explainer, yes.

Q. That does relate to achievement test scores on verbal reading and arithmetic, does it not?

A. That's correct.

Q. That reinterpretation or new finding would not affect your earlier responses with respect to the necessity for racial desegregation as it bears upon the other aspects of public schools?

A. I think I see your thesis and I agree with it, that is, one should never consider those two narrow measures of achievement as being the sole basis on which to determine the utility of racial segregation or desegregation. If that is your thesis I concur with it.

Q. Not only that there are other reasons as I believe the volume to which the Court refers points out but that I think we agreed earlier that there is more to school than achievement [523] test scores.

A. I concur.

Q. None of those social values of desegregation would be impaired by the greater attribution of social class to achievement test scores?

A. That's correct.

Q. Nor is there any dispute with your earlier analysis as to the correlation in fact between low SES and race in this country on account of prior discrimination?

A. That's correct.

Q. Are you familiar in that volume with a chapter by Christopher Jenks?

A. I am moderately familiar with it, particularly the reanalysis about dollars in schools as you may know where I sort of played more than other areas. I do know that part pretty well.

Q. Does your familiarity at the moment permit you to agree with me to the effect that the general, returning to the implications of Mr. Ritchie's question, the approach of additional dollars without more would seem on the basis of the reanalysis as well as the other data to which you referred, to be inadequate in terms of the problem?

A. My response to Mr. Ritchie's question was not based very much on the Coleman report, rather it was based on my work with Senator Mondale's select committee on equal education [524] opportunity where I have come to see almost every effort we have made at putting additional dollars on the head of poor children has somehow never occurred because we never have gotten the additional dollars there. As Senator Mondale says, "Every time we try to help poor children in this nation someone robs the train on the way."

That seems to be what happens when you look at actual delivery of Title 1 dollars to poor children, it often doesn't get there and a volume which has been mentioned here, Schools and Inequality, for the State of Michigan myself and colleagues found a negative relationship between the child's income and the amount of federal money being spent on him. Well, it wasn't a negative it was a positive relationship, poor children were not having money spent on them in Michigan the way it was alleged to be the case.

Q. If the dollars got there but nothing else was changed, including social SES composition and racial composition, would you be optimistic about the dollars spent?

A. No, I would not be optimistic even if the dollars were changed by thousands.

MR. FLANNERY: Thank you.

MR. KRASICKY: I have another question. Is it true I heard a report Coleman wrote a preface to this book the judge asked about?

[525] A. To my knowledge – I better not answer that. I don't know.

MR. KRASICKY: That's all.

THE COURT: I have a couple more questions but I am fearful of asking them because my experience usually is it's followed by a barrage of counsel questions.

A. Perhaps we could take a walk.

THE COURT: Perhaps I could accompany you to the airport.

MR. ROUMELL: You notice I have kept quiet, your Honor. Go right ahead.

THE COURT: I may not see you again and there are a couple matters which have troubled me throughout this case and it is troubling me now and because of my regard for your expertise and your experience and background I would like to have the benefit of your thoughts even if perhaps they are out of order.

Have you had occasion recently to read, I believe an article by James S. Coleman which in effect says that our educational system as organized and conducted in this country today is something like 30 or 40 years behind the times?

A. That is it was designed for an information-poor era.

THE COURT: Yes, and an action-rich era which is quite the reverse of what we have now. Do you agree with [526] that?

A. I find it a brilliant thesis and I agree with it for the middle and high SES child. For poor children it is still, relatively speaking, it is still not an information-rich world relative to their more advantaged peers. So for one to say, and here I will take some liberties with this statement, for him to say the schools should no longer worry about teaching information and cognitive development and just worry about attitudes and things might be very fine if all of the children were advantaged, but I think to do so at this time and point in history when there are still plenty of poor children who don't have access to information the way the

middle class child does would be to deprive them of an equal opportunity.

The schools in effect would be denying them something they need.

THE COURT: Do you agree with his observation that generally speaking we are out of tune with times in our needs?

A. I do.

THE COURT: Let me ask you another question and it has been touched upon already, I believe. Do you think that in attempting to solve our problems in the field of education that we tend to think in terms of the usual [527] American, if it is American way of solving things and that is, "Let's put some dollars into it."

A. That is too frequently the fallback position without any consideration to how to restructure the spending of the dollars. I concur with that observation.

THE COURT: As I recall, both the Coleman report and also the more recent analysis from data gathered by the Coleman Commission the general conclusion was that the amount of effort and money that went into supplementary support and resources for education just hasn't paid off.

A. No, sir, your Honor; in point of fact that is not a Coleman report finding.

THE COURT: It isn't?

A. No, sir.

THE COURT: Isn't that suggested by Brother Moynihan and his group?

A. Yes, it is suggested by them. The Coleman report finding was that they could find no relationship between amount of dollars spent and the performance of the child but subsequently scholars have reanalyzed that data and found that the analyses themselves are invalid. I will give you one simple reason why:

The measure of dollars per child was a district-wide average and we know that in most districts, [528] particularly large ones, the amount of money spent on a child, on every child in the district is not an average, some children have $100, $200 or $300 more spent on them in that district than others, at least. It's an

average dollar per pupil in the district. What they should have done is found the number of dollars spent on that child in that school and then given other proper controls they might have had such, or justified such a finding.

If your Honor wishes I would be happy to make available to you these criticisms of the Coleman report findings on "Do Dollars Make a Difference" such that you could evaluate them.

THE COURT: They will have to come to me through channels of these gentlemen here. I want to thank you for indulging me my matter of curiosity along these lines.

A. I wish I could explain it better. It is extraordinarily complicated. There are people at Harvard and the University of California at Berkeley, such as myself, that teach whole courses on trying to discern the difference that dollars make and I am sure I don't capsulate the problem very well in a few minutes.

THE COURT: I think you have done very well.

I take it there are no more questions?

You may step down.

Detroit, Michigan

Tuesday, March 21, 1972

9:30 o'clock, A.M.

(The hearing of the cause was resumed pursuant to the adjournment.)

(Exhibits were marked C-10, C-11, C-12 and C-13, by the reporter)

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[536]...

STUART C. RANKIN, was called as a witness by Defendant Detroit Board, and being first duly sworn by the Court, testified as follows:

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[606]...

Q. Dr. Rankin, doesn't this in essence set up a system whereby you have quality integrated education for all white and some black children and some different level of education is maintained for the overflow black surplus?

A. No, sir, it does not. I believe you said quality education is maintained for all white and some black. I would say no because of that phrase.

Q. May I amend that to a greater percentage of white children and a lesser percentage of black children based simply on the percentages in the city?

[607] A. Because of the present complexity of the sentence I will have to respond by uttering another one instead of saying yes or no, sir.

Q. Please do.

A. It is clear to me that we would be expending a significantly greater amount of funds and resources for some of our youngsters than we were for others. Some of those are white and some of those are black.

Q. Yes, but proportionately, Dr. Rankin, more would be white because their availability sets the ceiling, is that right?

A. If by "proportionate" you mean there would be a greater percentage of the white children in our schools who would be allowed to participate then the percentage of black children in the school, then you are correct.

If, on the other hand, you mean just the sheer number of students then you are incorrect.

Q. I thought I said proportions.

THE COURT: May I interject a question?

MR. FLANNERY: Please, your Honor.

THE COURT: A prior witness indicated–I think Mr. McDonald did–that it is anticipated that the magnet program would directly affect about 20 or 21-thousand students.

A. I believe, sir, that is slightly low an estimate. If we were to count the present 8, the new 16, add the middles and the [608] new 16 elementaries, we have 40 schools at the elementary and middle level at 500 students each, which would be 20,000 and in addition to that we should add the students at the academic high schools and according to our projections we would put at least 1200 in each of those so that would be an additional 4800 students bringing it to about 24,800.

THE COURT: Let's take it as modified by you then, say 25,000. What is the future of the program in terms of the number it will affect? Is that a constant figure if the student population in the city remains constant?

A. For that part of the program I believe it would be constant unless we were to add even further numbers of schools. This does not include what students might choose the majority to minority option and it does not include what possible affect the magnet high school specialty curriculum might have but for those we are sure of I think the figure would be fairly constant.

THE COURT: Now, if the program would affect directly let's say 25,000 students under the magnet plan wouldn't that intensify the racial imbalance in the remainder of the school population?

A. It would.

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[612]...

Q. (By Mr. Flannery, continuing) Dr. Rankin, returning briefly to Judge Roth's question concerning the potential Plan A for intensifying segregation in some degree, it is a fact, is it not, sir, that approximately 500 of the white transfers were from predominantly black schools to less black schools under the magnet plan this past year?

A. At what level?

Q. Below high school level, junior high school.

A. I believe that is true.

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[648]...

Q. Dr. Rankin, do you agree with Dr. Guthrie and Dr. Foster that [649] with respect to desegregation the earlier the better?

A. Yes, sir.

Q. When you speak of a metropolitan plan that could begin this fall with one to three grades, from the standpoint of educational soundness and administrative feasibility from what you know now, could those grades be catered to, 1 to 3?

A. They certainly could from administrative feasibility. There might be some question about kindergarten because they usually go only half a day but that would be the only reason why.

Q. 1 to 13, no problem?

A. No problem.

Q. 1 to 3 preferable?

A. Yes, in my opinion.

Q. Why is K to 2 omitted from Plan A?

A. The Board in its wisdom suggested that plan should begin above Grade 2.

Q. In your judgment are their sound educational reasons for that exercise of wisdom?

A. No, sir.

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TRANSCRIPT – METROPOLITAN HEARINGS

[1]Proceedings had in the above-entitled matter re: Metropolitan Plans, before Honorable Stephen J. Roth, United States District Judge, at Detroit, Michigan commencing Tuesday, March 28, 1972.

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[4] THE COURT: Gentlemen, we have not had an opportunity for a pre-trial conference. We arranged the schedule of these hearings and I would expect the best way to proceed on this phase of the case, that is, a consideration of the metropolitan plans for desegregation would be to receive the proofs from the State Board of Education first and then the proofs of the Detroit Board of Education followed by proffs of Intervening Defendant Magdowski, et al and proofs of the plaintiffs.

Some of the newly intervening parties have filed objections to the conditions of intervention which I have not given full consideration to. Presently, I believe all the Court need say is that the conditions are subject to modification and change as justice may require as the proceedings progress.

At this point of these proceedings I see no possible harm or prejudice to the intervenors by the conditions I previously imposed. So we may proceed in an orderly fashion with a sense of expedition. Let me first [5] inquire whether counsel for the new intervenors have selected lead counsel?

MR. SAXTON: We have not had an opportunity to do that pending a determination on the objections we filed because some of us had more time to prepare in certain aspects of the case than others and we think that will have to be done on the basis of who will speak in connection with individual witnesses.

We do not understand your order to be so broad that at the outset of the case we had to select one counsel among all of us to continue to act throughout the trial. If we misread your order we apologize. We did not read it to have that kind of breadth.

We had hoped perhaps the Court might reconsider the constriction at least insofar as an opportunity of counsel to represent their individual clients is concerned. We will at the first opportunity endeavor to select a spokesman. We would like some clarification as to whether in fact we are required by this order to select one spokesman at the outset who will act throughout the entire proceeding.

THE COURT: I don't intend to limit you any further than necessary to make sure that we proceed with dispatch and without delay and especially do I want [6] to avoid repetitive examination of witnesses on the same subjects. That is my intention and purpose and design.

Inasmuch as you have not selected lead counsel let me for the present then suggest this method of procedure: Counsel for the new intervenor will participate in the examination of witnesses in the following order, first, counsel for Allen Park et al, second, counsel for Carrie Green, et al and then counsel for other intervening school districts.

This like any other procedural arrangement is subject to change and I would hope that counsel for the new intervenors may select lead counsel. This is not to foreclose, if the occasion arises, and need appears, for other counsel to participate in the cross examination of witnesses.

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[8]MR. LUCAS: Plaintiffs suggest that an inquiry should be made at this time as to whether or not the State defendants are going to propose, advocate any particular plan to this Court? The plans have been filed and there has been discovery which we would like to file at this time with the Court with reference to the particular plans which I think discusses them and if all the State is going to present is someone merely [9] to get up and say, "I have here planned so and so and it is such and such" we can read that. But, if the State is going to present the merits and demerits and make some recommendations to the Court I think we would like to know if that is their course, otherwise I can see no particular merit in merely an oral presentation of what is already in writing either in the written plan or depositions.

MR. KRASICKY: The Plans that were submitted by the State Board were submitted without recommendation, that is on the record and the Governor and Attorney General have filed a response to the plan noting their objections and citing the legal infirmities in the plans.

We do not intend to call witnesses in support of any particular plan. We thought we owed it to the Court to bring someone down to explain them but if the Court doesn't want to do that we will withhold the witness.

THE COURT: That raises a point which has troubled me since the response of the Board by the filing of the several plans. The Board as you just pointed out submitted these plans without recommendation. Perhaps you can enlighten me on what that means.

[10]MR. KRASICKY: Well, it means what it says. The minutes.

THE COURT: Well, let me ask you a couple questions.

MR. KRASICKY: Sure.

THE COURT: See if I understand what that means.

Does that mean that the Board is opposed to desegregation?

MR. KRASICKY: I don't believe so.

THE COURT: Or does it mean that the Board is for desegregation but it cannot agree on a plan of desegregation?

MR. KRASICKY: Well, I would answer the question this way:

As the Court is aware, the Board speaks through its minutes and the minutes were submitted with the plans, and they, as I say, speak for themselves.

Now, we have gone on record many times, they are in favor of desegregation. The Court will remember that during the trial on the merits the State Board minutes were introduced to praise the Board for adopting the April 7th plan. So this is their position.

Now, relative to its respective plans –

[11] THE COURT: In other words, their position is that they are for desegregation but that they cannot agree on a plan?

MR. KRASICKY: I think that would be a fair statement.

MR. LUCAS: Well, on the deposition of Dr. Porter we tried to pin this down ourselves, and I think the best summary is Page 83, when he says that the Board has adopted a resolution.

MR. SACHS: Excuse me, your Honor, I am going to object to Mr. Lucas reading from depositions which are not in evidence and

of whose taking we had no adequate notice. I don't know what appears in that deposition. This is not testimony before this Court.

MR. LUCAS: If he wants to submit a petition to cross, he may do so. We offered the deposition just a minute ago and there were no objections.

MR. SACHS: I heard no offer. You started reading.

MR. LUCAS: Well, I said that we filed depositions at this time, your Honor, and this is a defendant's deposition.

THE COURT: Well, let him finish with what he considers the bearing on the question I asked.

[12] MR. LUCAS: Dr. Porter says they didn't make a decision period, and I think that is exactly the way it was. It is not a matter of the Board tried to agree on a plan, I think they just decided to not submit a plan, just to send all those plans to this Court. And that is still deposition. Perhaps plaintiffs might have a position to take, perhaps the Court might want to make further inquiry.

THE COURT: Well, I would expect, then, under the circumstances, the very least the Board should do is show us what the plans would accomplish in their estimation.

MR. KRASICKY: We are prepared to call a witness to explain to the Court how the plans would work. Now, if the Court doesn't want to hear that witness, we won't bring him.

THE COURT: No, I do.

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[13] . . .

RICHARD WILLIAMS MORSHEAD,

was called as a witness by Intervening Defendants, and being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. RITCHIE:

Q. Would you please tell the Court your full name?

A. My full name is Richard Williams Morshead.

Q. And your occupation, sir?

A. I'm an Associate Professor of Education and Chairman of

the Department of Education at the University of Michigan's Dearborn Campus.

Q. And would you tell us, for the record, your educational [14] background?

A. I have a Bachelor's degree in social science and education from Wayne State University, a Master's degree in educational psychology from Wayne State University and a Doctor of Education and Philosophy of History and Education from Wayne State University.

Q. Where do you reside?

A. I reside in Detroit, 10416 Sommerset.

Q. And how long have you been a resident of the City of Detroit?

A. About all of my life with the exception of several months, as an early infant.

Q. Do you have a family?

A. Yes, I have. I have a wife and two daughters, both attending Detroit Public Schools.

Q. Would you give us a brief summary of your professional background and experience?

A. A number of years ago I was a substitute teacher at the City of Detroit, after that I became a school psychologist for the Grosse Pointe Public Schools. I taught school in Grosse Pointe Public Schools. I have moved on and was an instructor in philosophy and psychology and sociology at Highland Park Community College. I then moved on and was a part time faculty member at [15] Wayne State University for a number of years in the College of Education.

I also taught at the University of Missouri in Kansas City on a part time basis. After that I became a full time faculty member, after the completion of my doctorate at Wayne State University in the Department of History and Philosophy of Education. I then moved on to the University of Michigan at the Dearborn Campus, where I was in the Social Foundation Department, and subsequently became the Chairman of the entire Education Division at the University. That's Dearborn Campus.

Q. In addition to your professional capacities do you serve any political office at the moment?

A. I'm currently a member of the Regent 7 Board of Education in the City of Detroit. That's Regent 7 East, on the northeast side of the City of Detroit, serving the Denby and the Finney High School constellations

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[117]...

MR. SAXTON: Well, I have not advocated that we turn to the doctrine of reciprocal of equal schools. I am pursuing Mr. Morshead's viewpoint as an expert in the field of education; nowhere do I recall any questions where I return to the reciprocal of equal schools doctrine, and do not advocate that.

THE COURT: Well, without commenting on either of your views; this is cross examination. You may proceed.

A. May I clarify my position now?

Q. (By Mr. Saxon) You may do so in any manner wish, Doctor.

THE COURT: If you remember the question.

(laughter)

A. What I am saying is that the most significant variable so far as evidence that I have witnessed; I have seen, I have worked with contributing to school achievement, is socio-economic class. I am not by this denying that Title I funds, for example, have some impact as well as do other [118] things.

Q. (By Mr. Saxton) How did you determine, Dr. Morshead, that the required or desirable racial mix was a 20 percent minimum of minority group individuals, up to a maximum of 33 percent; what yardstick did you use to determine that?

A. There was no absolute yardstick here, this was a decision of the committee. We agonized over this for an extended period of time.

If I may be permitted to report on the considerations that were taken into mind at that point and the outcome of those considerations: The 20 percent figure was the figure that the black

members of the community in terms of their professional experience with the black community felt was the minimum that could be afforded in order that the minority group members of our society have some measure of identifiable status.

On the other hand, we wished to make sure that the numbers were sufficient that the majority group would remain the majority group within the population.

And also we had to take into consideration another factor, and that was the number of minority group youngsters with the metropolitan area, so that they might be spread as far as possbile in sufficient [119] numbers so that desegregation and integration would be meaningful; we wanted stable, though, what is known as the "tipping point," the so-called tipping point in any particular school.

I think that pretty much sums it up. It was a committee decision.

Q. Now, I believe you are familiar with the statistical fact that in terms of the whole, that the greatest number of low socio-economic status people in this country are white and not black.

A. I think I confined my remarks to the urban centers of America.

Q. Now, I take it your premise is based upon mixing of people, not merely of races but of differing socio-economic status background; is this correct?

A. This is correct.

Q. So that if you took a very poor, white, low socio-economic status white group and mixed them with a low socio-economic status black group, your result, you would accomplish nothing in terms of your goal; is that correct?

A. Correct.

Q. So this not merely requires, then, mixing of people according to their races but according to, somehow, some determination of their SES status?

[120] A. That is absolutely correct.

Q. That's right?

Now then, does that mean that in selecting a student, let's say, to be bused from one area to another, that one of the qualifications will be we will have to determine the individual student's SES status, to see whether he qualifies to be bused or whether he does not?

A. No, it does not determine whether he will be bused, it determines where this youngster will fit in, in terms of the total composition of any given school. That youngster may not be bused; other youngsters may be bused to his or her school.

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[203]...

A. But individual schools may be desegregated at a ratio above or below the 20 to 33 percent.

Q. Let's assume the Pontiac City District as presently constituted is already desegregated, in fact, it is involved in another court. Let's call that just for purposes of our discussion Region 7, that one district by itself, Borough 7, and suppose you expanded your present Borough Number 3, if you follow me on the map, to take in some of these areas such as Bloomfield Hills, just make them slightly larger or expanded Region 4 to take in Rochester or some of the other areas you described, we would have a slightly different racial proportion in those two regions or we might recast all of the regions to come up within the parameters you described, is that correct?

A. Yes, I used the word "borough" so we don't confuse it. We are talking here about regions in Detroit but we do have plans and we developed some, Mr. Lucas, where [204] exactly the type of a description you gave us we have already worked it and it seems to be satisfactory.

Q. Let's see, the borough has a superintendent and assistant superintendent appointed in whatever mechanism you suggested.

A. Yes.

Q. It is really not anything much different than what we now call an intermediate school district in Michigan. An intermediate district in Michigan has a number of school districts within it and it is not necessarily co-terminus with the county boundary, is that correct?

A. The ones in the tri-county area to my knowledge are.

Q. All right, but there are some in Michigan assuming that that statement is correct, there are some in Michigan which are not co-terminus with the particular county boundaries?

A. I believe that is correct.

Q. So a very close analogy to what you are proposing and calling a borough which is somewhat a smaller unit and an intermediate district formed where you have general supervising authority which has some general powers and superintendency of an educational program, I think it is the vocational education, special education children, which crosses district boundaries at the present time?

[205] A. Correct.

Q. That is handled out of that central office which already exists for each county as an intermediate district, is that correct?

A. That is correct.

Q. And there is an analogy to that?

A. They are analogous.

Q. Really what you are talking about in these particular boroughs is looking at it as not so much as separate school districts but as a selection of school buildings, elementary, junior, senior, middle school, whatever they might be for which people assign a plan, is not limited by the present school boundaries to be developed?

A. I didn't follow you. Try me again.

Q. Let me take Region 3 just as an example. What you contemplate is looking at this for desegregation purposes as a collection of school buildings in one school district, intermediate district or borough, whatever we want to call it, and developing a pupil assignment plan which results in desegregation which is not limited by the existing district boundaries within the borough, is that correct?

A. Your description is correct except I would hesitate to consider it a single school district.

[206] Q. But for desegregation purposes you would not be stopped by the district boundaries?

A. That is absolutely right, sir.

Q. Doctor, I have one problem with the separation of powers for the borough superintendency, the borough office you are talking about. Isn't it quite difficult to separate educational factors in a system that affect the desegregation process and the integration process which may or may not be the same thing from every other aspect of school operation, curriculum, for example, is a very important ingredient of desegregation. I believe you speak to it in your plan about the necessity of celebrating controversy rather than suppressing it.

A. Right.

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[209]...

Q. Would you turn to Page 5 of your plan, please. The statement is made there:

"The quality education or integrated education cannot occur without school desegregation."

Although not listed specifically as one [210] of your criteria is that a basic criteria for you personally as an educator and as a criteria for this report?

A. This is the basic underlying standard that supports this entire document and it is my conviction as a professional educator and as a philosopher of education, yes, sir.

Q. You cannot measure quality education solely by achievement tests, can you, Doctor?

A. That is my position, sir.

Q. There is a field called the "affected domain" which deals with attitudes of students that educators are familiar with, is that correct?

A. That is correct.

Q. And the cognitive skills, the reading, writing and arithmetic which is the other segment generally discussed, is that correct?

A. That is correct.

Q. The attitudes, the perceptions of segregation, I believe the research does support the proposition that whatever happens in

the affected domain does have effects in the cognitive skills and areas, is that correct?

A. That is correct.

Q. Doctor, isn't there a body of literature, studies, that [211] indicate that the attitude formation and self-perceptions children get in terms of their school environment at least are most important at the earliest years, first, second, third and fourth grades?

A. Yes, sir.

Q. That doesn't mean they can't get changes in attitude or development of an attitude after that but the most important period is the early formative years, is that correct?

A. The years up to the point of puberty, yes, sir.

Q. Doctor, is there any justification other than politics in leaving approximately 80 percent black children in all black schools?

A. Apart from the rationale that was developed in the plan and presented in the pages there, no.

Q. Doctor, if you put this constitutional rights to the vote, politics, so to speak, do you think there would have been any progress in desegregation in this country?

A. You are referring only to the latter part of your last question?

Q. Yes. Do you think if it was put to a vote, the popular acceptance in terms of the political process, do you think there would be desegregation?

A. Are you asking me as an educator?

[212] Q. From your own experience as a citizen?

A. As a board member serving on Regional Board Number 7 in Detroit I heartily agree with your proposition.

Q. It would not?

A. It would not.

Q. Therefore, if we are going to condition what we do on whether or not it would be politically acceptable we would not do very much?

A. If that were the only condition considered, yes, sir.

Q. You mentioned something about concentrating certain resources in the desegregated schools K through 4. You are familiar with the Rand Corporation study done through the Department of Health, Education and Welfare on the success or failure of compensatory education, are you not?

A. Yes, sir.

Q. And the general conclusion was that compensatory education, some eight or nine million dollars, had been a failure in terms of the effort expended and the product?

A. There is some contravening evidence that I believe I made reference to that would be available from the Detroit Board of Education but in the main your report is correct.

Q. There may be some isolated instances where it helped but [213] in general the compensatory education has been a failure?

A. Yes, sir.

Q. Are you familiar with the study Racial Isolation in Public Schools?

A. Yes, sir.

Q. I would like to read to you a statement from that and ask you a question about it.

> "Another important factor in successful school desegregation is the involvement of all schools in the community. Where desegregation affects only part of the community, the affected parents may feel resentful at being required to contribute to the solution of a problem which other parts of the community remain free to ignore."

Do you agree with that?

A. I agree with the principle that I interpret underlying that all people engaged in public – all people whose children are partaking of public education ought to be involved in this process.

Q. Do you think that is true of the K through 4 parents, parents of children in K through 4? Do you think they should be involved?

[214] A. They will be involved, sir, under the auspices of this plan when their youngster enters the fifth grade and their youngsters will be involved in the integration aspects of this proposal.

Q. Isn't one of the crucial periods of time when desegregation first occurs is when some of the mythology about what is going to happen is solved by finding out that the world does not come to an end because you desegregate. Isn't it important that that particular period that all people in the community share the responsibility not only for dealing with the problem but solving the problem?

A. Yes, sir.

***

[218] Q. And if the Court is to decide that perhaps something like –

Are you familiar with the State's Plan 3, which is the metropolitan plan? Have you looked at it?

A. Yes, I have looked at it.

Q. What they call the I.O.Z., six regions, this sort of thing?

A. Yes. It's pretty fuzzy in my memory right now though.

Q. Assuming such a plan developed which did not retain the existing school districts as a separate entity, would you think it possible, assuming that your goal was to come up with, rather than multiply years of administration, a single administrative unit but perhaps some sub-unit, as Detroit has, regional boards? Would you think it feasible to have, as its first year of development, a retention of the existing school districts while some of the mechanics of the merger of school districts were worked out?

A. This is entirely feasible. And it was under consideration for this plan. And one of the options that was before the committee was that the retention of the local school districts be an interim detention, and the boroughs themselves would end up being the equivalent of the school districts.

[219] It was finally concluded that we would go with this particular format but the other format was considered and it is workable.

Q. Assuming an approximate 20 percent minority population in the metropolitan area, or at least the part that's most urbanized,

would you describe your plan as an effort to achieve maximum desegregation within limits of feasibility of transportation?

A. Yes, sir.

Q. One other point. I think you testified that more than 45 minutes would be, in your opinion, too long for an early elementary child, or I think you used the term "primary grade child". Up to 45 is okay, within that parameter but much more than that you would think counter-productive?

A. I believe this to be the case.

Q. Did you not also say, Doctor, on your direct examination, that the maximum estimated time for transportation under the plan that you have proposed is 45 minutes?

A. This was our estimate. It may be in error because it is only an estimate.

Q. All right. Similarly, the 45 minutes is an estimate and a variable depending on the child, his age and his grade, naturally?

[220] A. Yes. Yes, oh, yes, yes.

Q. So within your own estimate and your own criteria there is no justification in terms of time or distance – time being a more important factor – for not including the elementary grades or the primary grades; is that correct?

A. Smaller youngsters, in my estimation, could be bused for shorter distances, and the fatigue factor that I alluded to would not be debilitative to their education.

MR. LUCAS: Thank you.

MR. RITCHIE: I have no further redirect examination, your Honor.

MR. KRASICKY: I have one or two. May I?

THE COURT: How many?

MR. KRASICKY: One or two.

THE COURT: I will allow you three.

MR. KRASICKY: Three? Fine.

RECROSS EXAMINATION

BY MR. KRASICKY:

Q. Yesterday when you were cross examined by Mr. Saxton I believe you said that the SES factor was the most significant factor, and that money was not important. Is this what you said; is that a correct statement?

A. I believe I said, or my intent was saying that in terms of educational output as is normally measured by those [221] affairs that are quantifiable, that the SES variable is the most significant and that other variables controlled by financial input are not nearly as significant.

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[379] STEPHEN JAMES SCOTT,

was called as a witness by Defendant Detroit School Board and being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Mr. Scott, how old are you?

A. Fifteen.

Q. Mr. Scott, where do you go to school?

A. I go to school at Roeper City and Country School in Bloomfield Hills.

Q. And is that a private school?

A. Yes.

[380] Q. What grade are you in?

A. I'm in the tenth grade.

Q. Mr. Scott, how long have you gone to the Roeper School?

A. I will finish my fifth year at the end of this June.

Q. So what grade did you begin the Roeper School?

A. The sixth grade.

Q. And you have been to Roeper School, then, sixth, seventh, eigth, ninth, and now the tenth grade?

A. Yes.

Q. Mr. Scott, I am embarrassed to ask you this question but because the record is not pictorial; you are black, is that correct?

A. Yes.

Q. Where do you live, Mr. Scott?

A. I live in Detroit, on Glendale near Highland Park.

Q. Glendale near Highland Park. Would you say that is about four miles from the center of the city?

A. Yes.

Q. Now, for the benefit of the Court and the record, you mentioned that the school you are attending, Roeper, is in Bloomfield Hills. Is that off Woodward Avenue?

A. Yes – it's right on Woodward Avenue, the school.

Q. How far is that from the city known as Pontiac, Michigan?

A. It's about three miles, a little more, south of Pontiac.

[381] Q. How do you know that?

A. There's a sign a few yards north of the school that says so.

Q. And is Roeper School beyond Birmingham?

A. Yes; about four miles.

Q. How do you get to school?

A. By a school bus from the Roeper School.

Q. A school bus from the Roeper School. And where does that bus pick you up?

A. At Boston and Woodward.

Q. Boston and Woodward. Is that in Detroit?

A. Yes.

Q. And how far is that from your home?

A. About a mile or two.

Q. About a mile or two. Now, do you know how far Roeper School is from your home?

A. It's about 20 miles.

Q. Have you clocked it on a speedometer?

A. Yes.

Q. Now, when do you get the bus?

A. The bus is supposed to pick me up at a quarter to eight in the morning.

Q. Quarter to eight. And are there other children from Roeper School waiting at your bus stop at Boston and [382] Woodward Avenue?

A. Yes.

Q. And how long does it take you to get to the bus stop?

A. About five minutes.

Q. And what time do you arrive at the school?

A. About a quarter to nine, ten to nine.

Q. So would that be an hour ride that you are on the bus?

A. Yes.

Q. When do you leave the school at the end of the day?

A. The buses leave at 3:25.

Q. And is that the bus that you take going home?

A. Yes.

Q. Now, Mr. Scott, what time – does the bus drop you at your home or does it drop you at Woodward and Boston?

A. No, it drops me at Glendale and Hamilton, which is on the way to Boston and Woodward.

Q. I see. And what time do you get dropped there?

A. About ten after four.

Q. Well, how long is the bus ride coming back?

A. About forty-five minutes. It's usually slower than that on the way back.

Q. Do you, Mr. Scott, participate in any extracurricular activities at Roeper?

A. Yes.

[383] Q. Could you tell us which ones, or a few of them?

A. Football, basketball, track and baseball we have, and drama.

Q. Now, do you practice football after school?

A. Yes.

Q. And how do you handle your transportation when that happens?

A. The school will provide a shuttle bus down Woodward for the boys who need it, and that goes to Seven Mile and Woodward, and from there we have to get our own transportation.

Q. Is there public transportation from Seven Mile and Woodward?

A. Yes.

Q. DSR?

A. Yes.

Q. Do your parents ever come out to visit the school at night?

A. Yes.

Q. Have you been with your parents?

A. Yes.

Q. And how do they get out there?

A. My mother usually drives.

Q. Is it correct that at Roeper you designate the high [384] school as the upper school?

A. The high school and the junior high grades, seventh through – seven and eight, yes.

Q. Called the upper school?

A. Yes.

Q. Do you have any idea what percentage black children there are going to the Roeper upper grades?

A. It's in the area of 10 percent. Maybe more, maybe less, I'm not sure.

Q. How about in the lower grades; do you have any idea?

A. It's a little more.

Q. Now, Mr. Scott, do you know whether or not there are any children that might ride the bus longer than you do?

A. Yes. There's a bus from Flint and there are a couple of kids from farther out.

MR. ROUMELL: Pardon me for one minute, your Honor.

Q. (By Mr. Roumell) This one mile that you are from your bus stop, you said you got there in five minutes. How are you able to cover one mile in five minutes?

A. My mother drives me there.

Q. Are you on the track team, by chance?

THE COURT: He may be a four-minute [385] man.

MR. ROUMELL: He may be, and I hope he will be.

(Laughter.)

Q. (By Mr. Roumell) You mentioned there were children riding school buses from Flint to Roeper School and you mentioned there were a couple students you knew that lived farther out. What did you mean by farther out?

A. Well, one boy I know particularly lives in Warren and he rides the bus longer than I do.

Q. Are there any children younger than you on the bus?

A. Yes.

Q. How young?

A. All the way down to about two or three years old.

Q. Oh, they have a pre-school program at Roeper?

A. Yes.

Q. So you tell us there are first, second, third, fourth graders on the bus?

A. Yes, it's possible.

Q. Well, on the bus you ride are there?

A. I'm not exact. I think so; I'm not quite sure.

Q. But there are smaller children on the bus?

A. Yes.

MR. ROUMELL: Thank you. Thank you, [386] Mr. Scott. Some other people may want to ask you some questions.

THE COURT: Examination?

MR. KRASICKY: No question.

MR. CONDIT: I have a couple of questions.

CROSS EXAMINATION

BY MR. CONDIT

Q. Sir, is it a fair statement that Roeper School is, in your judgment quite an outstanding school?

A. Yes.

Q. You would have to say that as long as you go there, I guess.

THE COURT: It's his school.

MR. CONDIT: Right.

Q. (By Mr. Condit) Tell me, how many students are there in your upper school that you described?

A. There are about 200 to 250 students.

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[389]...

Q. All right. Now, when you get to this location at Seven Mile and Woodward – when you participate in extra-curricular affairs – and the bus, I think you said, drops you off at Seven Mile and Woodward or Seven Mile and Hamilton?

A. Seven Mile and Woodward.

Q. Seven Mile and Woodward. And then from that point you either have to be picked up by your parents or you have to take a DSR bus?

A. Yes.

Q. What time, when you participate in these extra curricular activities such as football, what time do you get to this drop location after you have completed your extra-curricular activity?

A. I'm not certain of the time I arrive at Woodward.

Q. Well, is it dark?

A. Sometimes, yes.

Q. All right. In the fall of the year during the football season, by the time you get down there is it generally dark?

A. Usually later, like in October it's dark sometimes.

Q. It's dark. All right. And what time do your classes terminate at Roeper?

A. Well, the schedule varies day to day by the way it's set up. So some days my classes end at 12:30 in the afternoon and other – and other days they last later, until 2:30. But I have three periods in between.

Q. You have been riding this bus for the last five years?

A. Yes.

Q. All right. I take it that you know that there is a bus, there's a different bus that goes to Flint and to Warren; is that right? It is not the same one you ride, is it?

A. No, it's not; It's a different bus.

Q. I take it that you don't know the route that those buses take.

A. Not exactly. I've ridden that bus a couple times.

Mr. Saxton: [391] All right, I have no further questions, Mr. Scott. Thank you.

THE COURT: Mr. Lucas?

MR. LUCAS: No questions.

THE COURT: Any other examination? You may step down, sir.

RICHARD MARK SHAPERO,

was called as a witness by Defendant Detroit School Board and being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. ROUMELL:

Q. What is your name?

A. Richard Mark Shapero.

Q. Mr. Shapero, how old are you?

A. Fifteen.

Q. And I must ask you this question: Would you state your race?

A. White, Caucasian.

Q. Where do you go to school?

A. Roeper City and Country School in Bloomfield Hills.

Q. And where do you live?

A. On the northwest side of Detroit, near Seven Mile and Livernois.

[392] Q. Seven Mile and Livernois. What grade are you in?

A. Tenth.

Q. How long have you gone to the Roeper School?

A. About eleven years.

Q. Eleven years?

A. Yes.

Q. You went to pre-kindergarten at Roeper School?

A. Yes, for half a year.

Q. Beg your pardon?

A. For half a year.

Q. For half a year. And how old were you when you went?

A. Three and a half or four.

Q. And you have been going every year since that time?

A. Yes.

Q. Would you tell the Court, if you would, please, how you get to school on the normal school day?

A. On a bus that's provided by the school.

Q. And where does that bus pick you up?

A. About a block from my house.

Q. And how long do you ride that bus to get to school?

A. Forty-five to fifty minutes.

Q. And what time does the bus pick you up?

A. About a quarter after eight.

Q. And what time do you arrive at school?

[393] A. A little after nine.

Q. Now, Mr. Shapero, how do you get home?

A. On the bus, also?

Q. And when do you pick up the bus to go home?

A. About 3:25.

Q. How long does it take you to get home?

A. About the same time, about 45 minutes.

Q. Now, Mr. Shapero, have you ridden this bus every year that you have been in Roeper School?

A. Except for a half a year of nursery. Since kindergarten I have.

Q. Since the kindergarten you have ridden the bus?

A. Every day.

Q. Every day you have gone to school?

A. Right. Just about, yes.

Q. Do you participate in any extracurricular activities?

A. Football and basketball.

Q. And does that require practice sometimes after 3:25?

A. Yes.

Q. And how do you get back?

A. A bus that's provided by the school, that goes down Woodward.

Q. And, Mr. Sharpero, have you gone to any school events in the evenings with your parents?

[394] A. Yes.

Q. And how do your parents get out there?

A. They drive. Unless it's maybe like basketball, and then a bus is usually provided from the school, for spectators.

CROSS EXAMINATION BY MR. KRASICKY:

Q. Can you tell us where you went to kindergarten?

A. At Roeper.

Q. So you have gone your entire school life has been at Roeper?

A. Yes.

MR. KRASICKY: Thank you.

THE COURT: Other questions, Counsel?

MR. SAXTON: Very brief.

CROSS EXAMINATION BY MR. SAXTON:

Q. As you move from where the bus picks you up at the school, do you go over and go up Woodward after?

A. Yes.

Q. And you are moving north?

A. Yes.

Q. And you have observed that most of the traffic at the time you are going to school is moving in the other direction; south?

[395] A. Yes.

Q. And when you come home at night I take it you notice the same thing, that the heavy traffic moves in the opposite direction from the one you are traveling in ?

A. Yes.

Q. All right. Have you lived in Detroit all your life?

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[397]. . .

STUART RANKIN,

resumed the stand as a witness herein, and having been previously duly sworn testified further as follows:

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[411]. . .

Q. I believe you previously have testified that one of the problems that you had or do have within the city limits of Detroit, is that you have a large number of black students who are poor, and this results in low SES.

Am I paraphrasing –

A. (Interposing) Yes, sir.

Q. And on the other hand we have a number of middle class in the suburbs who, it would be fair to say have a higher [412] SES?

A. Yes, sir.

Q. Now, Doctor, I think you have mentioned a target area; is that correct?

A. Yes, sir.

Q. Would you explain to the Court what you mean by a target area?

A. Well, if one is going to have a metropolitan desegregation plan one needs to decide what the bounds of that metropolitan area are. And we as others have done struggled with where that boundary should be drawn. We felt that it should be drawn far enough out so that we can provide an adequate balance for socio-economic status, but we also felt that we should draw it far enough out so that we could avoid having racially identifiable schools. We felt that we should not draw it so far as to make unreasonable transportation problems; we felt that we should draw it far enough out so that it should at least inhibit white people – although I am sure that it can't totally prevent it – so that all of us share in the desegregation plan and that we have no racial isolation in the general area, either black or white.

And in pursuing that we decided that [413] the Oakland, Macomb and Wayne County area was a logical one to choose, and that was our basic first decision.

And then within that we made further decision. Do you wish me to go forward?

Q. Well, we will get to those in a moment.

Now, Doctor, referring to the concept of racial identifiability, I believe it would be fair to state that your testimony previously was that a school anywhere from 35 to 55 percent black or more could be construed as a racially identifiable school?

A. I believe my testimony was that when it moves some distance from the general ratio of the nation or of the total metropolitan area if you will, that you begin to get racial identifiability. So that if the proportion of black students in the metropolitan area is around 20, 21, 22 – 23 percent, well, then, if you begin to move up beyond that to 40, 45, 50, even though the school may still have a majority of white students it begins to be seen as a racially identifiable black school, and certainly as it moves beyond that, very quickly becomes racially identifiable.

Incidentally, I don't think I testified as to any given point at which that occurs.

Q. I see. Doctor, as far as white racially identifiable [414] schools, could you describe what you think that is?

A. Well, I think a school is generally considered a white school, oh, probably up to 8, 10 percent black students. But shortly thereafter it begins to be called the desegregated school. I am not sure exactly at what point that occurs.

Q. And was it racial identifiability that the task force was, among other things, addressing their attention to?

A. Yes.

Q. Now, white flight: Is there any significance to white flight in education in terms of SES?

A. Yes, sir. Generally, the average – let us assume a scale of socio-economic status running from low to high. The average socio-economic status of black families is considerably lower on that scale than the average socio-economic status of white families. And when the white families leave a neighborhood, then they take with them that higher socio-economic status and that lowers the socio-economic status in the place where they leave And that is an example of what occurs.

Q. Now, in regard to the target area do you have a map that shows your target area?

A. Yes, I do.

Q. Could you produce that.

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[423]...

Q. But the constellation that you have made with Southfield, Berkley, Oak Park and Ferndale, those are suburbs, so–call north suburbs that are near the city limits of Detroit?

A. That's correct.

In fact, Southfield borders on the city limits.

A. That is correct.

Q. Now ––

A. Could I?

Q. Yes. Could you explain why you chose those suburban school districts?

A. Certainly.

What I want to illustrate is that when we were near this downtown portion of Detroit and we were making combination with some suburban districts, we tried to choose ones that were near the edge of Detroit if possible, in order to reduce the distance for that combination. Then as we moved further out, then we would go further out in the total metropolitan [424] area. And I think the best place to illustrate that is on the east side, where King High School -- which is near downtown -- is combined with Grosse Pointe, Harper Woods and East Detroit. That is the area that is orange on the map.

And then one moves out from King High School and one gets to Southeastern High School and its constellation would be combined with the next grouping as one goes out; South Lake, Lakeview, Lake Shore and Roseville.

And if one goes out still further, to, say, Kettering, then the combination is with Warren and Utica.

And still further, with Denby and Finney, the combination is with Chippewa Valley, Fraser and Clintondale.

And if one comes back in further to Northeastern then it would be with Detroit Osborn and Van Dyke, Fitzgerald, Centerline and Warren Woods.

Generally speaking, we felt that had to be done in order to minimize the total distance.

Incidentally, these are also generally done along the traffic, the expressways and other main thoroughfares, in order to facilitate [425] transportation.

Q. So then we have a skipping technique. Would it be fair to say we have the technique where the school that is nearest to the center of the city is clustered with a school right beyond the city limits, and a school farther from the center of the city is clustered with the suburb farther away?

A. Yes.

Q. From the city limits?

A. Yes.

Q. Could you give us a couple of illustrations in the northwest if you would.

A. Surely.

Central High School one, which I have just shown you, is in lilac. And if we move out further to Cooley and Redford, the combination is with Clarenceville, Farmington and Novi.

Or if we move out further north to Mumford and Ford, the combination is with Avondale, Bloomfield Hills, West Bloomfield and Walled Lake.

Q. Walled Lake. Would you identify the last cluster, by Number 1?

A. Walled Lake is combined with Mumford and Detroit Ford in Cluster Number 9.

[426] Q. And this skipping I take it, Dr. Rankin, one of the elements to be considered in the skipping is the transportation element?

A. Yes, that's correct.

THE COURT: Mr. Roumell, would you help me a little bit? The copy that you gave me of Exhibit 11 has a blank Page 3.

MR. BEER: I have one.

MR. ROUMELL: Many apologies, your Honor.

THE COURT: Well, it shows I am awake.

MR. ROUMELL: Well, I would only accuse one of my colleagues of being near my desk.

THE COURT: There will be those who will think I was trying to make the point.

(Laughter.)

MR. ROUMELL: No, your Honor. I am very embarrassed. Because I might have eliminated Birmingham and Bloomfield Hills by leaving out Page 3, and I certainly didn't want to do that.

(Laughter.)

Q. (By Mr. Roumell) And Cluster Number 10, that involved Detroit Northern High School; is that correct?

A. Cluster Number 10 is shown on this map in green, dark [427] green. It includes the high school constellation of Detroit Northern and the school districts of Highland Park, Hazel Park, Royal Oak, Birmingham.

Q. Those are districts that are along the Woodward Avenue corridor; is that correct?

A. That's correct.

Q. And Detroit Northern is on Woodward Avenue and Clairmount?

A. That's right.

Q. And would you –

A. (Interposing) The I–75 Freeway also serves some of those districts.

Q. Now, Doctor, you mentioned that the design was an attempt to control distances, travel distances; is that correct?

A. Among other things.

Q. And you did utilize the three or four expressways in the Detroit area as much as possible?

A. That's correct.

Q. And major thoroughfares such as East Jefferson and Gratiot and Grand River?

A. That's correct.

[428] Q. Could you show on the map where the expressways, just illustrate where the expressways go.
go.

A. I–94, the Ford Freeway East runs out this way and I–75, Chrysler Freeway, runs out this way and the John Lodge is I–96 and 696, out this way and westbound I–94, the Ford, through here and the Fisher runs down this way.

Q. One of the criteria you mentioned is managability, is that correct?

A. That is correct.

Q. Would you again tell us what you meant by that criteria?

A. Well, the task producing a pupil assignment plan for 970,000 pupils is large and probably too large and probably even

unmanageable unless one takes apart parts of it so what we tried to do was to make those parts as small as we could and still preserve the best we could the racial balance and the socio–economic status balance while doing it.

To make something manageable simply means make it doable, make it feasible. In this case we believe that three or four or five school districts and representatives from the high school constellation or two in Detroit can, if directed to, deal with a multitude of problems that go into producing an effective desegregation plan and they can certainly do so better [429] than some total grouping of the whole metropolitan area can. Naturally the smaller you make the area the more manageable it becomes but eventually if you make it small enough you are no longer able to achieve the desegregation or balanced socio–economic status so it is a case of trying to maximize on a set of criteria.

Q. Now in the 18 clusters that you have, I would like to refer you to Exhibit Number 11. I note that there are four clusters with less than 40,000 students.

I will take your word for it, sir.

Q. That there are three between 40 and 50,000 students.

A. I concur so far.

Q. That there are six between 50 and 60,000 students?

A. Yes, sir.

Q. Three between 60 and 70,000, one 80, and one 105,000 students.

A. That is correct.

Q. I also noted, Dr. Rankin, that referring to Cluster Number 6 which happens to be the largest number we have of a suburban school district, Livonia, with 38,133 students?

A. Yes, sir.

Q. Referring to Cluster Number 10, we have two school districts in that cluster, Royal Oak with 19,000 and [430] Birmingham with 17,000, is that correct, Doctor? Referring to Page 3?

A. Yes. Those figures are approximately correct, sir.

Q. Of course, Doctor, approximately how many children are in the Detroit school system?

A. I believe we have about 288,000.

Q. So these clusters are actually smaller than the Detroit system?

A. Yes, sir.

Q. In terms of student enrollment.

A. That is correct.

Q. Than at least two or three cases the clusters are about the same size as perhaps the largest suburban school district, namely, Livonia?

A. Yes, there are a few about that size.

Q. Doctor, you pointed out that the primary concern, of course, of the plan is desegregation and I assume a question of racial mix is part of that, am I right?

A. Yes.

Q. Would you explain how the racial mix, using the map and using Exhibit Number 11, how the racial mix figures into your plan or to the plan of your team?

A. Yes, sir. It happens, if I may I will use the number of minority students and percentage of minority students [431] rather than percent of black students because those are the figures we work with. There is a difference as we have talked about in this case, there are some other races, but I think we can serve the purpose this way as long as we understand that I am speaking of percentage of minority students so there are about 22.9 percent minority students in the total target area of 970,000 pupils and so one would think that he would try in his desegregation plan to have each cluster approximately 22.9 percent and as a matter of fact, it is not possible to make them all 22.9 percent but with a certain range, not to far from there it is possible. So that we have a range that runs, with the exception of those two clusters, the two northern most clusters –

Q. What numbers are you referring to? Is that Number 12.

A. Number 12 and 18.

Q. Twelve would be the cluster around Pontiac and Number 18 would be the cluster around Mr. Clemens?

A. Yes, sir. With the exception of those two clusters I believe we have stayed generally between 18 percent minority and 30 percent minority in every one of the clusters.

In those two instances while in Number 12 which is northern Oakland County cluster, we [432] have only 23 percent minority students and in Cluster Number 18, northern Macomb County we have only 8.4 percent minority students, but other than that they run I believe between 18 and 30 percent.

Q. What was that percentage on Macomb again?

A. 8.4. That is the range.

Q. What does the plan do in connection with that range?

A. We find that in order to also balance socio–economic status that in some cases it is necessary to run a smaller minority participation in order to boost the socio–economic status. What I am talking about generally is we find a higher socio–economic status generally as we go north from Michigan Avenue around western Wayne County and in through the lower part of Oakland County and, indeed, over to Macomb than we have in southern Wayne County, so the socio–economic level of the outlying districts in southern Wayne County is somewhat lower than it is in other parts in Oakland County and when we start combining by race we end up with a compromise with a lower percentage of minority students in the clusters in southwestern Wayne County, they are down closer to 18, 19, 20 percent for those clusters, and we have a lower socio-economic status also and the clusters that combine districts where there [433] is more wealth such as Farmington, Bloomfield Hills, Birmingham, and Southfield we have a higher percentage of minority group students but also a higher socio–economic status mean for those areas.

Again we are in a situation of trying to use more than one criteria in order to make a decision and when one does that one makes compromises.

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[436]...

Q. (By Mr. Roumell, continuing): So then, Dr. Rankin, to summarize you and your team with approval of the Detroit Board of Education has attempted to consider racial mix, the SES manageability and travel distances?

A. Yes, sir.

Q. You tried to make these concepts work as a total unit?

A. Yes, sir.

Q. Doctor, I would like to go into another phase. I want[437] to talk to you about governments. We had some testimony from one of the proponents of the metropolitan plan about governments and I would like to know what the plan of the Board is about governments and how this would be made to work.

A. It has been the position of the Detroit Board of Education that if we are going to create new governing bodies that we should do so with some clear purpose in mind because the creation of a new governmental structure is a major undertaking. Therefore, if it is possible to respond to the need without doing that it would be advisable to do so.

So the Detroit Board's position has been to work within the existing governmental structures and to preserve the existing school districts, the existing school districts, the existing intermediate school districts and the other authority, of course, the State Board of Education.

It has in this plan been suggested that within those structures it can be done. There is one new governmental unit in a sense that the arm of the State would be strengthened by the creation of an authority. I believe in this plan it is called the Metropolitan Desegregation – Metropolitan Detroit –[438] I'm sorry, I think it is called the Detroit Metropolitan Desegregation Authority. Let me correct it one more time – Metropolitan Desegregation Authority.

Q. Page 28.

A. Yes, thank you, of the Basic Guidelines. This authority's job would be to oversee the desegregation of the metropolitan area and its responsibilities and authorities would be limited to those concerns of desegregation. It would establish, if necessary,

guidelines and may reports and in general would be the monitoring agency to effect the carrying out of the plan.

We see it as pretty much an extension of the State Board of Education and as responsible to that body.

Q. Of course if the State Board of Education wanted to set up a different agency would there be any objection on the part of the planners?

A. We believe that it is necessary to have an authority with the power to enforce and report and carry out but it wouldn't have to be this exact structure, no.

Q. One other thing I meant to ask you about the plan. I want to refer you to the Cluster Number 12 which, I believe, is the so-called Pontiac cluster?

[439] A. Yes, sir.

Q. If that is the cluster that has a minority mixture of 12.3, is that correct, looking at Page 3 of Exhibit Number 11?

A. Yes, sir.

Q. Is it an essential part of your metropolitan plan that Cluster Number 12 be included?

A. We think the plan is stronger with that cluster present but since it does not provide direct desegregation for Detroit pupils it would not be as high on our priorty list as the other 16 clusters but we believe the plan would still provide effective desegregation for Detroit pupils in the absence of that unit but we believe in desegregation and we believe that is a good part of the plan.

[440] Q. That would be a factor, would it not, in the white flight factor or the middle class factor?

A. Yes, sir.

Could I – I don't know whether it is proper, but you asked me a question earlier that I didn't finish responding to, and I didn't know whether you were going to pursue it or not. On governance.

Q. Oh, I'm sorry. But before I do that, may I ask you about Cluster 18, the so-called Mount Clemens cluster.

Would that fall in the same category as Cluster 12?

A. Yes, sir. We believe that it is an important part of the plan that that portion of Macomb County is indeed associated with Detroit, that its involvement in the total desegregation plan will strengthen the total plan. But we believe that there is still considerable merit to the plan in the event it were removed.

Q. Those are the only two clusters that do not include Detroit pupils?

A. That's correct.

Q. And they happen to be clusters that are the farthest away from Detroit, the center of Detroit.

A. Yes, sir.

Q. Now, I believe, Doctor, you indicated to me that you [441] would like to tell us a little more about the concept of governance as related to this plan.

A. Well, we believe that when one considers more than one school district, that one is pretty much, is quickly in the domain of the State. And the State Board, we believe, is the logical, responsible organization. And as I spoke before, that we believe they need an arm to monitor this operation and suggest a metropolitan desegregation.

We believe the Intermediate School Districts have a key role also. They at present are, they are more of service agencies to the local school districts than they are enforcement arms of the State. Many of us hope that that remains the case. But in any event the Intermediate School District will often provide programs for the handicapped where it's not possible for a small local district to do that. Because they don't have enough students to run the program.

And in other ways they provide experts in various areas. The Oakland County Intermediate School District has a rather well established computer facility and they do a lot of computer work for their districts. The Wayne County Intermediate School District, as to the other districts, have staff [442] consultants, they have experts in transportation, in-service education, various subject areas. And we believe that they can in this plan provide the same kind of consulting service, coordinating service, facilitating service, so that as the cluster begins to work through the details of its plan it has access to that kind of help, which could, in my judgment, reside in all three of these Intermediate School

Districts. So they would continue to play the kind of role that they have been playing.

The local school districts have also been the key of the educational program, the heart of it. They are the ones who are responsible; they are the ones who conducted the programs. And that would remain the case in this situation. They would be in a new situation where it was necessary with regard to desegregation, and that would take them into other areas, working in cooperation with some other districts. And that will cause them to play some new roles.

But we believe the responsibility for the specific design, the mechanism of assigning peoples, the decision as to which grades are housed in which schools, the transportation mechanisms, the in-service education programs, the plans for making [443] sure that we prize the dignity of every student, the plans as to insure equal quality, to insure increased quality, to provide equal opportunity; all of those demands fall on that cluster of local school districts which would have to operate in a team fashion. And in my judgement and in our judgement, the best way would be for them to respond, given a date and a deadline, to respond with a specific plan.

I believe they can do it far better than anyone else; they know their own school plants, they know where laboratories are, they know where cafeterias, lunch rooms are, they know their own transportational capability, they know the needs of their individual pupils better than anyone. In our judgment the specifics of the plan should be worked out by the participants, by cluster.

THE COURT: Mr. Roumell, we will take a recess at this time.

(Whereupon a brief recess was taken.)

(Resume after recess.)

MR. ROUMELL: May it please the Court.

[444] DIRECT EXAMINATION (CONTINUED) BY MR. ROUMELL:

Q. Dr. Rankin, then do I understand you that the clusters, it is proposed that the school districts within the clusters would cooperate in effectuating this plan?

A. That's correct.

Q. In fact I believe you testified earlier in these hearings that it would be preferable if the school districts were in the planning stage in terms of the pupil assignment.

A. Yes, sir.

Q. And do I understand you to say that school districts are now cooperating among themselves in such areas as special education?

A. Well, the school districts in many cases cooperate with the Intermediate School District doing this, and certainly there are intra-district cooperation endeavors. I wouldn't say that we have a lot of them, but surely there are examples, yes, now going on, where school districts are cooperating in endeavors.

Q. And the cooperation in special education is done through the Intermediate School Districts?

A. Generally.

Q. And is there any reason why that cooperation can't be done in the area of desegregation, through the Intermediate [445] School Districts?

A. None that I know of.

Q. Incidentally, Dr. Rankin, listening to you testify, do I understand that we don't need computers to assign students?

A. Well, I think that the people who work with the children and youth in those districts could create plans without the use of a computer. Although it may be useful for certain functions, it is just a tool to help you do some things more rapidly. And if there were a lot of things that had to be done it might be easier to computerize part of it, but it is not necessary.

Q. In fact, wasn't that one of the considerations in making smaller, manageable units?

A. Yes, sir.

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[448]. . .

Q. All right. We have a blackboard there, why don't you illustrate how under the plan that is being proposed by the Board, how you would mix students.

A. As I say I would leave that mixing to the cluster but I would recommend that the order should require certain criteria be met.

Q. What would be the criteria?

A. There be a racial balance within certain limits.

Q. What are the limits?

A. That is a long question. I believe, for example, in a cluster there might be 25 per cent minority group students and 75 per cent majority group students in one of these clusters. I would urge that every school in the cluster be required--that the plan put every school in the cluster in approximately that ratio and I would think that one would issue some guidelines like 15 to 35 per cent or some other ranges within which one would try to accomplish that in every school.

If the clusters of schools was unable to meet it in some case then the burden of proof would be on them to show why but that is what I mean by within a range.

[449] Q. What are the other criteria? You talk about the range.

A. I would urge that the cluster be directed to demonstrate that it has indeed done what it can to balance the socio-economic status within the cluster.

Q. All right.

A. I would urge that there be as equal as possible treatment of students regarding any burden such as the burden of transportation so that it isn't the case that I ride the bus to another district for 12 years and you don't go at all, but rather that that burden is shared. I think these criteria are possible to meet.

***

[550] A. There is talk in Part II about the need to balance SES and other things that I don't think could be achieved within the city. But certainly, those guidelines that speak of comprising individual dignity and providing quality education would be appropriate to any plan within the city.

Q. Is it your testimony that you couldn't improve the SES balance within the Detroit School District, weighing the high against the low? Is that your statement?

A. We couldn't do it in any way that I believe would provide very much educational advantage for the children. We could, indeed, balance the SES within the city, and I have testified in opposition to the effect of that, at an earlier date.

Q. Now, Dr. Rankin, let me ask you, preliminarily: You did work on the prior introduced plans which have been rejected by the Court with reference to an intra-Detroit plan, so-called; is that correct?

A. Yes, sir.

Q. All right. So you are familiar with that and with this plan; is that correct?

A. That's correct.

Q. All right. Would it be possible to desegregate the Detroit School District so that it would reflect the [551] ratio constituency of the pupils within the district?

MR. ROUMELL: I am going to object, your Honor. We were going into the Detroit plan originaly; here we are talking about the Metropolitan Plan.

MR. SAXTON: By way of background, your Honor, I have already conceded that the concept has been rejected by the Court. I don't think that makes that question irrelevant, particularly since this case may well not end in this court and may well be a matter to be considered at some future time.

THE COURT: Well, that may be. I don't want to restrict you too much in making a record but I am concerned only with this trial. And you can concentrate on any other matters that may require your attention that won't require mine at a later time.

MR. SAXTON: I might point out to the Court that we are under somewhat of a burden here, because at the time that we could have prodigiously asked the questions, we were not invited to attend the hearings. That is when questions were asked on intra-Detroit plan. The only opportunity I have had to ask the limited questions is now, because I had no prior opportunity. And I ask your indulgence now. That is the only question I intend to ask on that subject.

[552] THE COURT: Now, on that basis you certainly may.

As to your allusion to the fact that you came in here late, that was your doing, sir; not mine. You chose a time to move to intervene; I didn't select it for you.

MR. SAXTON: Well, I think it would serve no purpose in engaging in further colloquy, your Honor.

THE COURT: That is right, and I prefer to avoid it. You made the allusion so I thought it best to rejoin it.

Q. (By Mr. Saxton) Do you remember the question, Dr. Rankin?

A. Yes. It calls for, I believe, a definition of the term desegregation, in order to be answered.

[553] Q. Well, I gave you the qualified factors, could it be desegregated to the extent of balancing the Detroit school system so as to reflect the racial constituency of the school district?

MR. LUCAS: I would object. Obviously the question calls for can you mathematically balance the schools in Detroit, but, is that desegregation is a legal conclusion which has been debated in the Court which this Court already ruled on. If he wants to ask him can he physically get a racial proportion in every school I think that is a fair question within the limits the Court has suggested but whether or not that constitutes legal desegregation of Fourteenth Amendment requirement is not the province of this witness in reality particularly since the Court ruled on it.

MR. SAXTON: The question does not assume that. The question was can it be desegregated to that extent. Whether or not that is legally proper or whether or not that is desireable I am not asking him.

MR. ROUMELL: I'll join in Mr. Lucas' argument.

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[555]. . .

Q. Do you know whether Cass in terms of its student make up is predominantly black or predominantly white?

A. I guess it would have a majority black students but I'm not certain of that.

Q. Do you know how it's SES factor relates to other high schools in the City of Detroit?

A. No, I do not.

Q. Are there any other schools in the City of Detroit that are left out of your clustering plan?

A. Any other schools?

Q. Yes.

A. The Aero Mechanics High School is not included and there [556] are I believe, the Oakman and the School for Physically Handicapped, I think is omitted. I believe the Detroit School for the Deaf is omitted. There may be a couple others, special schools that are omitted, yes, sir.

Q. As I understand it then you omitted Cass because it has no direct correlative schools feeding directly into Cass as the other schools?

A. That is right.

Q. Don't you feel the students at Cass are entitled to the same educational quality as the other schools?

A. I do feel that.

Q. Are you aware of the fact that Fairlane School District which you have included in your cluster is not a K through 12 school system?

A. I didn't know that but I did understand that it was becoming a part of the Dearborn Schools, either has or will be shortly. That is one of the reasons we included it in that cluster.

Q. What resource material did you and your task force use or consider in formulating this basic guideline plan?

A. We used the evidence from Research. We used data about enrollments, about socio-economic status and about achievement from the State of Michigan. We used some [557] maps showing school boundaries. We used experience and knowledge of and about what makes for quality education. We used – well – other things.

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[589]...

THE COURT: I didn't say I was going to hold you to an hour. Apparently you didn't hear what I said. I said that counsel should

concentrate in their cross examination or examination on the subject of our assignment and that if they spend time on other matters they run the risk of being cut short.

MR. SAXTON: I will abide by your [590] ruling.

THE COURT: Just as questions have been raised about conditions of intervention here. I made it plain, I thought, in my ruling and I certainly intended to if I didn't that those are not hide-bound riveted forever. If the occasion arises when reason and common sense and justice requires that we change those or modify them you can be sure that I will listen to you and consider doing so.

MR. SAXTON: Thank you.

THE COURT: The hour I mentioned is not hard and fast either. Occasions vary. It may well develop cross examination of 10 minutes will be too long on a particular occasion, on other occasions perhaps two hours or three hours is perfectly in order. I say whatever you do do it with your eyes on the target because if you waste time on matters which I consider off target you may run the risk of being foreclosed when you get so, down to the crucial matters.

MR. SAXTON: Thank you, your Honor.

THE COURT: We will be in recess for a few minutes.

(A recess was taken.)

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[600]. . .

Q. So it must be, I take it, on the assumption that the additional funds will promote the quality of education?

A. Well sir, there are other factors in here too.

Q. But it is the expenditure of additional funds that are designed and are assumed to enhance the educational program in the school, is that not correct?

A. It is the policy of the Board to spend an equal amount of effort for all pupils and then add to that through the Federal funds and other special monies that become available for it, additional resources for those [601] children with special needs such as the handicapped and the disadvantaged and others.

Q. By disadvantaged do you mean disadvantaged in the terms of low socio-economic status?

A. Yes, sir.

Q. As I understand your cluster plan some of these people who are disadvantaged in terms of low socio-economic status would be transferred out of the Detroit School District into some of the metro districts?

A. For some other schooling, yes, sir.

Q. Right.

A. Yes.

Q. Are you aware of the fact that in per pupil expenditure Detroit ranks number 46 out of 527 school districts in this State?

A. I was not aware of it nor am I surprised by it.

[602] Q. All right. You do have access to the Michigan State Department of Education Bulletin 1011?

A. I have access to it.

Q. You are aware of the fact, are you not, that the per-pupil expenditure in the Detroit School District is higher than it is in a good many of the metropolitan suburban districts?

A. I don't know what a good many are, but it is higher than some, yes, sir.

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[627]...

If it turns out that the plan is impeded by their failure to act then this Court might step in but until that time I don't think the question of elections and referendums are really relevant to the issue.

THE COURT: First of all the witness said repeatedly the plan does not speak to the finances. Number 2, I am not interested in his opinion about whether there should or should not be a vote on it. This is a legal question. The objection is sustained.

Q. (By Mr. Condit) Incidentally, I was not asking for your opinion but rather than that of the plan, but in any event you would concede I believe that this is an important factor of implementing the program which the plan describes?

A. Financing it?

Q. Raising money, yes.

A. Yes, sir.

Q. I would like to run through the continuity of authority here under this proposed plan. As I understand it we would start at the bottom of the local school districts, is this [628] correct, then go to the clusters? The chain of command is what I am interested in.

A. The chain of command is basically the local school districts and the State of Michigan. There are a couple or three intervening agencies that perform particular functions but they should not be judged in my view as part of the line chain of command because their functions are so limited, for example, the clusters simply name the school districts which under this plan would work together to formulate the specifics within a criteria or guidelines set either by the order or state. There are no governments there.

Q. Could I stop you there. Let's talk about the clusters. As I understand the school districts would send their representatives to a so-called cluster meeting, is that right?

A. Yes, sir.

Q. I note that we are talking about say in the Southfield area I think this is No. 7, Mr. Roumell referred to it as the lilac color, in the lilac color we have Southfield, Oak Park, Berkley and Ferndale, I believe, with the central district.

A. Yes, sir.

Q. These school districts I have mentioned have elected [629] officials, superintendents, et cetera, that could go to this cluster meeting. In the central area this is not part of your regional board but it is part of a regional area, is it?

A. Yes.

Q. It is not coterminus with a regional area?

A. It is one of the two high school constellations in Region 5.

Q. Who would appear at this cluster meeting on behalf of the central consolidation?

A. The person or persons designated by the Region 5 Board or Region 5 superintendent, if they gave him that authority. I

would envision such sessions being coordinated by the Intermediate School District.

Q. In any event elected representatives would appear from the school district and probably appoint people from the region, is that right?

A. I don't know who would appear. I would assume in the local districts that the Board of Education would either directly appoint or authorize the superintendent to appoint someone to appear on behalf of that district and that in Detroit the regional board would do exactly the same thing.

Q. These people then would meet and work out the implementation under certain criteria, is that correct?

[630] A. Yes, sir.

Q. The Intermediate School Districts would just be a resource assistance type of entity?

A. Although there has been some effort, as I mentioned a few days ago, for the Intermediate School District to become a directing agency, over the years their traditional role has been one of a service agency. They exist as service agents to the local districts in their area and they provide certain services that are better provided for large groups and they facilitate a number of things and I think it would be an ideal assignment in this situation to be the facilitating agency to give consultant help and to arrange for meetings of such cluster groups.

Q. As a service capacity?

A. Yes.

Q Then we move up to the authority which I believe the plan call a Metropolitan Desegregation Authority?

A. Yes, sir.

Q. Let's assume at the school district level there is a decision about particular desegregation which is not acceptable to the cluster. I assume that the cluster would control over the school district's decision, is that correct?

A. I assume.

[631] Q. What does the plan call for?

A. We have only submitted to you a list of—I mean all of the plan has is a set of clusters so it doesn't say specifically how they will work.

Q. The plan does not speak to that, is that correct?

A. No, sir.

Q. This authority, however, that you speak of does this report to the State Board of Education?

A. Yes, sir.

Q. If there is a dispute than the school district and the authority as to what textbooks should be used, what plan of desegregation should be used, which entity controls?

A. The plan doesn't speak to that. I would assume the state.

Q. We spoke, I believe, about teachers. You indicated that there had to be a certain addition to staff and I conclude there would also have to be certain subtractions from staff?

A. Perhaps an exchange of staff would effect both purposes.

Q. Let's assume we had a teacher that taught at a particular school in a certain discipline for a number of years and chose not to leave the school voluntarily, what would the plan propose in this regard?

A. The plan does not speak to that.

Q. Well, does the plan address itself as to whether a particular [632] teacher should or should not be discharged from a particular school district for failure to comply with a transfer move?

A. We have had some experience in trying to achieve a balanced racial makeup of the staff in Detroit and I know that this can not be achieved at once but there are a number of things one can do. I would really prefer Mr. McCutcheon respond to them.

Q. Do you anticipate he will testify?

A. That will be up to counsel for the Board, sir.

Q. Sir, on page 32 you speak about pupil assignment at the very bottom of the page. It indicates this assignment would be made preferably on a basis under which attendance at a nearby school alternates with travel. When you say attendance at a nearby school—

A. I'm sorry, tell me again exactly where you are.

Q. Page 32, the bottom of the page.

A. I'm with you now.

Q. The last three lines, you talk about assignment, you want all children to share in the experience of traveling, is that correct?

A. Yes, sir.

Q. Do you think this is a worthwhile experience for them?

A. Well, I think that there is merit in being both host and [633] guest and there are some advantages in being a host and some advantages in being a guest and some advantages in understanding what it feels like and so I think there is some educational merit but generally speaking we believe that the burden of traveling is a burden. It does take pupils time and ought to be shared equally.

Q. You mentioned this should be preferably on a basis at which an attendance at a nearby school alternates with travel. My question is do you mean attendance at a nearby school for a year at least in your mind as distinguished from other plans where we are in our own school for two days, for example, and bussed out for three days?

A. The plan doesn't speak to that but all of us who work on it would, we intended we were speaking of periods of time of at least a year.

Q. In earlier plans we have seen a proposal that perhaps you are familiar with, say two or three days at one school and two or three at another. Under these plans do they also propose some degree of busing of teachers? This plan doesn't speak of that, does it?

A. This plan doesn't speak of it and although this plan recommends a mixing device it doesn't specify a precise one and I think I testified the other day that there were at least four different kinds I can think of although [634] only two of them were recommended in this proposal.

Q. I believe on Thursday and perhaps today to some extent you defined the goal of the plan as providing equal access to equal treatment within education.

A. That was one of my definitions of equal educational opportunity, sir.

Q. Do I conclude that equal access to equal treatment within education is not presently available within the Detroit Public Schools?

A. It's not available in a situation where students are separated by race in Detroit so it is not available.

Q. So in your judgment then presently there is no equal access to equal treatment within education within the Detroit Public School System ?

A. On the basis that there is racial segregation and socio-economic segregation that is true.

Q. Do you have any evidence that there is not equal access to equal treatment within education in the suburban districts involved in this litigation?

A. In my judgment it is inappropriate to speak of equal treatment witnin an arbitrary boundary such as a school district. One ought to speak of equal treatment within the metropolitan area. There clearly isn't equal treatment within the metropolitan area.

[635] Q. My question had to do within the individual school district?

A. Well, I don't know whether there is equal access to programs and equal treatment within programs in the suburban districts.

Q. You don't know one way or the other?

A. I don't know whether there is within each district.

Q. Do you know any school district that is not present?

A. That is not what?

Q. Do you know any school districts within which equal opportunity is not present?

MR. LUCAS: Excuse me, Your Honor, may I inquire if he is asking is this present and available to Detroit black children or does he mean with the all-white student body or whatever the student body may be in the suburbs?

Q. Did you understand my question, sir?

A. I'm not sure. Do you want to ask it again?

Q. Yes, I will rephrase it. Do you personally have any knowledge that within any of the suburban school districts included in this litigation that there is not equal access to equal treatment within education?

A. Sure, in all kind of small ways. Some buildings have reading centers and some don't; some have tennis courts and some don't; some have swimming pools and some don't. [636] There are all kinds of examples everywhere in education.

Q. I don't think the subject matter of this is tennis courts and swimming pools. Excluding those items.

A. Well, it seems to me that racial isolation is bad whether it's white or black and so if you are living in racial isolation then you don't have full equal opportunity.

Q. Those students, for example, who are living in a white suburban school district are the ones that you are addressing your answer to that are deprived?

A. I am addressing my answer to all students who are in racial isolation.

Q. Racial what?

A. Isolation.

Q. This is a deprived situation in your judgment?

A. I think it is less than full quality education anyway.

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[660]...

Q. There would be nothing underlying the basic philosophies [661] of the plan, however, that might prevent a restructuring of the representation on the MDA?

A. In the wisdom of those ordering a metropolitan plan if some other scheme were appropriate, I don't think that particular makeup itself is an essential ingredient. It seems to me it is a good one and justifiable but it is not essential to the success of the plan.

Q. Did I understand you to testify that under the Detroit plan there would be no change in the existing school districts that

they would remain viable and autonomous bodies subject to the requirements involved with the metropolitan desegregation plan?

A. Yes, sir.

Q. Does the plan foresee the necessity of doing away with the local school districts, consolidating them, whatever?

A. No, sir.

Q. Doctor, on Page 29 of your plan it states, and I quote:

"It may in time —"

I am referring to the sentence before that to the intermediate school districts,

"It may in time make recommendations for district reorganization to the State. The present local school districts including the Detroit Central and [662] regional boards would retain at least for the present their present functions in order to provide continuity of educational programs."

On Page 23 also it states, "It may be well to provide for operational units smaller than these three intermediate school districts, yet consolidating the existing districts."

A. I would have to stand corrected on my former answer, obviously. On Page 23 we may have foreseen the need for developing some kind of grouping such as these clusters.

Q. That is why you went from the intermediate district size to the clusters?

A. Yes. On Page 29 it is clear that we did mention that sometime in the future one might want to re-examine the school district organizational system and see whether that is serving the needs of the pupils as effectively as some alternative method would.

Q. Might I gather this was more or less put in as an aside rather than something definite in the future?

A. Yes, because we thought some persons would be concerned and wonder what we thought about that, I guess.

Q. Regarding the subject of socio-economic status, I believe [663] that you testified that you have reviewed studies or reports or opinions of experts to the effect that when the low socio-economic status students are placed in the same classroom

with high SES students and the high SES students are in the majority the achievement level of the low SES student will rise but there will be no detrimental effect to the high SES student. Is this a fair summary of that point?

A. Yes, sir, well said.

Q. Doctor, is there, to your knowledge any report, study or any evidence at all to the contrary, to your knowledge as to this point, that is to the effect that there may be some detrimental effect to the high socio-economic student in this type of situation?

A. Where they are in the majority?

Q. Where they are in the majority.

A. I don't know of any, there may be some.

Q. All right. Doctor, you have testified at great length concerning the fact that your plan contains a number of guidelines and criteria for improving the quality of education, in addition to the mere fact of transferring students to the achieving a racial balance.

A. I did.

Q. Is that correct?

[664] A. Yes.

Q. I believe in fact you testified that any desegregation plan to achieve racial balance which would not take these factors into account would be a failure because they would not provide a quality education?

A. Those may not have been my exact words but I believe that attention to those other factors is essential, yes, sir.

Q. In addition to the socio-economic status factor I believe that some of these criteria or items were the improvement of instruction, parent-pupil involvement, improvement in staff effectiveness, attention to human values and increase in funds. I believe there were a few others?

A. Yes, sir.

Q. Could you actually call your plan a quality education plan as much as a plan of desegregation?

A. Well, it is basically a desegregation plan. It seems to me when one takes the kind of steps that are necessary to have that

desegregation that one ought to do it in such a way that he has as many things going for him as he can. The purpose, of course, is to provide equality of educational opportunity and I would like to also provide increased quality as well as equality and so the reason for doing it, it is basically a desegregation plan.

[665] Q. Let me put it this way: Let's assume some hypothetical Utopian school district or metropolitan area were either there are totally black students with no white students on the fringe or all white students or, let's assume a school system where for years and years there has been perfect racial balance in the schools. There is simply no racial balance problem either legally or factually. Let's also assume there are great disparities in the socio-economic status of certain schools in the certain areas within the school district of the metropolitan area. Could your plan as it has been prepared be implemented in such a situation to provide a quality education by achieving the socio-economic status mix that you call for plus the implementation of the other educational quality features?

A. I believe so, especially if the mix of socio-economic status occurred at the early grade levels, yes, sir.

Q. We could, therefore say that a plan of desegregation for racial balance purposes would of necessity include SES factors and other quality features but that a quality education plan would not necessarily have to include desegregation features assuming there were not desegregation problems?

A. No. I was speaking of the last example you gave where [666] you said there would be a racial balance. You said assume there is not problem of racial balance. For me that means both races are present. So it seems to me if you have a school system – it is improbable to have this Utopian quality education that you are speaking of in a situation of racial isolation. I am talking about the United States and the United States is a country where we have a large minority group of black people and I do not, I am unable to envision a Utopian perfect quality education system in which persons who are going to have to live and work together are separated from each other.

Q. One minor point, Doctor, do I understand that you would perceive that in the implementation of this plan in Detroit that

there may actually be some transfers of students solely for achieving a socio-economic status balance where racial balance is not involved in the transfer?

A. That would be my recommendation.

Q. One final –

A. (continuing): You notice that decision, however, is left to the local district regional boards, not the plan, the precise assignment of pupils.

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[709] . . .

MERLE HENRICKSON,

resumed the stand as a witness herein, and having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued) BY MR. ROUMELL:

Q. Mr. Henrickson, you were going to Exhibit 17 before the recess. Now, these examples or illustrations that you have prepared, am I correct, they are illustrations of [710] how you could transport students within a cluster, is that correct?

A. Yes. And also framework illustrations which I would presume would require some adjustment because of local conditions which I would not be familiar with.

Q. Also I would presume that it would require adjustments to correspond with whatever plan might be adopted?

A. Yes.

Q. And if a plan called for moving approximately 30 to 35 percent of the students it could be adjusted accordingly?

A. Yes.

Q. All you did here was just show what one method of transportation could be?

A. Yes.

Q. I want to make it perfectly clear on the record and to everybody in this courtroom Exhibit 17 has not been approved by the Detroit Board of Education, is that correct?

A. That is correct. It was not completed in time that it could be reviewed by the Board.

Q. All it is is my request to you as a possible example of how you could move students?

A. That is correct.

Q. Now, I call your attention to Exhibit 16. Mr. Henrickson, [711] could you tell us what Exhibit 16 is?

A. No, I can't.

Q. I'm sorry.

(Handing the witness Exhibit 16.)

Q. I show you what has been marked Exhibit 16, can you tell us what it is?

A. Exhibit 16 consists of reports to me from staff on some trial runs to show distances and running time within some of the greater distance clusters of the cluster plan. These are trial runs that have been made within the past week at the times that schoolchildren would be transported to test out the kinds of conditions, traffic conditions and so on, which might be run into but primarily to check the overall distances and apparent traveling time.

Q. These were done at your direction by your staff?

A. These were done at my direction by Norman Watson who is in charge of student transportation and not on my staff and Dr. Marvin Pittman, who is on my staff.

Q. I believe you indicated that these runs were made on what you considered the longer runs?

A. Yes, primarily we attempted to include some checks on each of the runs to the outer rim schools and these, of course, are from the outer edge of Detroit. The ones [712] who were not included in the sampling were those that were runs to the edge of the City of Detroit to the school districts immediately adjoining Detroit. Those runs are principally in the six to ten mile range. These are the runs that are somewhat longer.

Q. For instance, I see on Page 1 you had a run from–

MR. SAXTON: I would like to object to any testimony on the contents of the exhibit until it has been offered. It has not yet

been offered. I am not even sure this witness is qualified on this exhibit.

Q. (By Mr. Roumell) You asked this be done for you, is that correct?

A. Yes.

MR. ROUMELL: At this time I would like to offer the exhibit, your Honor.

MR. SAXTON: I have a couple of questions. Mr. Henrickson, do you have any supervisory powers over Mr. Norman Watson?

A. No, I do not.

MR. SAXTON: Do you have any supervisory powers over Dr. Stuart Rankin?

A. No, I do not.

MR. SAXTON: I notice it was prepared [713] by Norman Watson for Stuart Rankin, not for you.

A. Mr. Watson directed the memorandum to Dr. Stuart Rankin as the coordinator of the Task Force. The report was prepared after a conference with me and I think the report also indicates that a copy was mailed to me.

MR. SAXTON: I notice a copy was transmitted to you in some fashion. Are you able to answer any questions personally about the routes traversed in making these particular surveys, the roads that were taken, the condition of the roads, whether there was construction or not and those type of things? Do you have personal knowledge of any of that?

A. No, not beyond what is on the face of the report.

MR. SAXTON: You have no knowledge then that would underlie the matters stated on the report?

A. Except that, my knowledge that the groupings of the clusters in the first place were made on the basis of attempting to link Detroit schools along expressways and major thoroughfares.

MR. SAXTON: Mr. Henrickson, my question was you cannot answer any questions about how these conclusions were arrived at here or the conditions encountered in arriving at them?

A. Not beyond what is indicated on the face of the report.

[714] MR. SAXTON: This is not an example, the information reflected on proposed Defendant's Exhibit M-16 is not material that is kept in the ordinary course of business by your office, is it?

A. No, it isn't.

MR. SAXTON: This was a special study that was made?

A. Yes.

MR. SAXTON: You did not participate in it?

A. Except to select the routes which were to be run.

MR. SAXTON: It was not made by you?

A. It was made under my direction.

MR. SAXTON: I notice in the other column the first column under the word "Date" – is this an actual study or projected study? They are all dated April something '72 and none of those dates have yet arrived. This is an estimation of what conditions will be like on April 29th, for instance, since we haven't gotten there yet?

A. This is an obvious error. The date should be 3-29-72, 3-30-72, those were the dates that the runs were actually made.

MR. SAXTON: Your Honor, based on the [715] witness' responses I would object to the offering of the exhibit because the witness is not competent to testify as he indicates except as to what the written material shown on the exhibit says and we can all read it. This is not a document kept in the ordinary course of business but is a special study made and I submit the only witness who can qualify the document is one who participated in its making.

THE COURT: Any other objections?

MR. CONDIT: We would join in with Mr. Saxton's objection.

THE COURT: I understand the limitations of the witness with respect to the actual experience reflected in the report but I will follow Justice of the Peace Cane's rule; "We will let it in for what it's worth."

It may be received on that basis. I realize the limitations and there may be others who will speak to the same subject later on.

[716] DIRECT EXAMINATION (Continuing) BY MR. ROUMELL:

Q. Mr. Henrickson, you did select the routes; is that correct?

A. Indicated the schools, the distances that I wanted, the distances from a certain high school to a certain high school, and I indicated that I wanted him to follow the best routing along freeways or major thoroughfares.

Q. For instance I see on Page 3, it's called potential bus routes. These are only again by way of illustration; is that correct?

A. Yes. The first two pages are those done by Mr. Watson, the third and fourth pages are those done by Dr. Pittman, as indicated by the initial on the bottom of the fourth page.

Q. For instance, Western High to Van Buren on Page 3?

A. That's one of the longest runs, both in miles and in time, with a run along I-94.

Q. And then Central High to Southfield would be, in the western cluster, would be in Cluster Number 3; is that correct?

A. Yes.

Q. And then the second example, Detroit Central to Southfield, which shows 35 minutes, that would be -

[717] A. (Interposing) Cluster Number 7.

Q. - Cluster Number 7.

I notice that this shows the rate of speed and the miles involved and the roads used and the weather condition.

A. Yes.

Q. And the time of travel varies anywhere from about 25 to 26 minutes, up to 55. I believe you indicated the Western High to Van Buren was one of the longest runs?

A. Yes. Most of these fall into 15 to 20 miles range, traveled in 30 to 35 minutes. There are four that the traveling time is 50 to 60 minutes

Q. Four.

A. These are, I believe, the four longest runs involved within any cluster.

Q. This involves about 20 schools, am I right?

A. Yes.

Q. Would it be fair to say, Mr. Henrickson, that we have about 14 of these that are 35 minutes or under?

A. Yes. And this is a selection of the longer runs, also, as I indicated. Not having time to make all of them, we selected those that we considered to be longest.

Q. And again am I correct, these are only by way of illustration?

[718] A. Yes.

Q. That if a plan was ordered, details on the bus route, the efficient way of traveling, would have to be worked out?

A. Yes.

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[762]...

MR. LUCAS: I will make him my witness for that question, if necessary.

MR. SAXTON: I will object on the ground I wasn't in on that part of the testimony but the man's qualifications are that he is his expert on construction and as I understand it school building sites as opposed to the educational theory. I have not seen his vita but from his testimony so far I question whether he is qualified to give a personal opinion and it appears he certainly is not qualified to give an expert opinion on that type of subject matter.

[763] MR. LUCAS: I think he was qualified by your Honor at a previous hearing. I assume the Intervenors read the record or will do so at some time.

THE COURT: I assume the question is preliminary in nature in any event.

MR. LUCAS: Yes, it is.

THE COURT: All right.

Q. (By Mr. Lucas) Mr. Henrickson, there are a number of various techniques for desegregation. Let me call your attention to the blackboard where I have drawn diagrams. Let's assume that the X mark here first of all is a school building and that the squares surrounding it is the zone, attendance zone for that particular school. Under the various desegregation proposals it has been testified here the data available to the State Board of

Education by computer as to the number of students that would have to be moved in order to disestablish patterns of racial identity in the schools – let's make an assumption that we are going to use the 25 per cent figure that we have used in discussions today, let's assume that we have a student body of 100 in each school just for simplicity and assume that this school is in the inner city of Detroit and is black, and this school here in the suburban area is white. You would have to move from this school 75 black children, is [764] that correct, in order to come up with 25 per cent black ratio in this particular school? You would have to move out 75 black children and move in –

A. Yes, but if you are talking about a 25 per cent ratio you would have to have three white schools and you would move 75-25 each to the three white schools.

Q. Right. But you have to move out a certain number of students whatever ratio you pick, 25, 35, whatever it is you move out.

A. You have to move out 75, yes.

Q. Then you have 75 empty spaces and you would have to move in 75 white children to come up with the ratio, is that correct?

A. Yes.

Q. Suppose in preparing a plan you threw a perimeter around the school, whatever size necessary to come up with the number of black children that would remain in the school, that is to say that if you need 25 or 2500 black children in that school for the ratio you would take the 2500 children or the 25 children who live closest to that school at the present time and leave them in that school, transporting the children who live the furthest distance from the school. Would that not have a tendency to reduce some of your transportation times?

[765] A. It would reduce the transportation times in that end of the school district where you had children coming great distances to the school.

Q. You might, for instance, instead of drawing circles around the school simply say all children who live in this quadrant equals the number you need and would attend the school and then the

children who lived closest to the perimeter in the direction they were going would attend the other schools, is that correct?

A. Yes.

Q. There are many variations and shorter techniques?

A. That is the fashion we have normally transported for reasons of overcrowding, selecting a geographic area in transporting all children in all grades.

Q. In some other context other than my diagram it is sometimes called an "island zone" is that correct?

A. Yes.

Q. In the examples, illustrations which you have done, is it not the technique simply to take a group of schools in the particular area or cluster and look at all of those schools and determine what is the best and most practical manner of reassinging the pupils in order to change the racial patterns of the schools; isn't that in gross what you do?

[766] A. Yes, to select a grouping that will yield the percentage composition we want and then apply an organization that will achieve that and this organization at the elementary level is what is sometimes referred to as the Princeton Plan at the elementary level.

Q. I am referring particularly to Mr. Krasicky's question about Chrysler School. You are not limiting it to the children going to Chrysler now. They may go there for many reasons, they may not live physically closer to Chrysler but live closer to some other neighborhood school but happen to be there at Chrysler right now?

A. There are some at Chrysler right now who do not live there who have been admitted under various policy bases over the years.

Q. Essentially what you are doing is you wipe the slate clean, you have X number of school buildings with various capacities, various equipment and so forth and you have a certain number of students and you make an assignment plan.

A. Yes

Q. For practical reasons you sometimes use the existing zone and divide it up but that is not necessary either. You can

sometimes achieve more practical results by disregarding existing zone boundaries, is that correct?

A. That is possible, yes.

[767] Q. So it is not a question of reassigning Chrysler School which is desegregated in some artificial sense and surrounded by a number of other schools which are almost all black, it is simply taking X number of black children in the King constellation and there are some whites in that constellation and dealing with the white students in the Grosse Pointe Schools and coming up with an equitable desegregation plan, isn't that the basic outline?

A. Yes. There are several of the Detroit constellations that have varying numbers of white students in them although they are predominantly black. Where those situations occur the plan should certainly show some way of dealing with them so they wind up with a racial composition of the objective.

Q. I take it your predicate is no child, no parent on behalf of his child has a particular right to go to Chrysler or Joy or any other particular school. The School Board has the responsibility for assigning them to schools, is that correct?

A. Yes, this is correct. This plan does as we have illustrated does permit students for some years of their education or assumes they will be attending the schools to which they are now assigned assuming that we don't have to make changes in those boundaries for other reasons.

[768] Q. Would you say from your experience, Mr. Henrickson, that construction policies have a substantial effect on the process of desegregation and the ease by which it might be done or undone?

A. Yes, the availability of buildings in given locations can be very helpful or can be detrimental depending on the composition of the immediately surrounding area.

Q. Let's look first of all at Detroit and having in mind the Court's findings about excess capacity within certain Detroit schools and the concentration of that capacity in a number of predominantly black schools or innercity schools. Let's assume you use your present capacity figures per classroom. Would this

not reduce the number of black students that might be required to be transported out in some instances?

Let me give you an example. Suppose you have a school a thousand capacity and you have 500 empty spaces in that school. In terms of desegregating that school you would not be bringing out as many black children as if it had 1000 in it, it would simply be bringing in enough white children and taking out a smaller percentage of black.

A. In desegregating you are dealing with children and the number of children you have in a given situation, not in [769] the first instance with the capacity of the school.

Q. You have numbers of children but you would be bringing in substantial numbers of white children to that school and you would have space for them already in that school in a larger number. You wouldn't have to move out to make room for them in other words.

A. That's right

Q. Mr. Henrickson, the base plan or outline submitted by the Detroit Board calls for some regions that do not take any part of existing Detroit School System students, is that correct? I think it's Number 18 and Number 12, is that correct?

A. Yes.

Q. Could not some of the problems which were foreseen by the Board in terms of creation of a set of schools to attract white students away from integrated schools be controlled to some extent by restrictions on construction policy? In other words, if you did not permit construction of a ring of white schools outside of whatever perimeter the Court chooses, would this not have a tendency to limit the movement of whites out of the system?

A. To the extent that people move to what they consider good schools and there were not good schools available this would certainly tend, any restriction on construction of [770] schools would certainly tend to limit movement.

Q. Suppose you applied a uniform method of determining capacity of school buildings throughout the metropolitan area, where would there be a need for school construction in terms of geography, what area would have construction needs?

A. The Detroit schools have classrooms sufficient to accommodate students at a level of 31 to 32 students average overall. The other school systems average overall of classrooms sufficient to accommodate students at a level of 24 or 25 students in a class. This may not be true individually of all systems but on the average the number of classrooms in the metropolitan area indicate that capability.

I would draw from this the conclusion that in order to equalize class size over the metropolitan area the greatest construction need would be within the City of Detroit and I know from my personal knowledge that the greatest need would be at the secondary level within the Detroit school system.

Q. The establishment of new facilities, if you leveled out throughout the metropolitan area would be in Detroit rather than building a ring of schools around Detroit or in the outermost reaches, you would tend to establish more [771] capacity within the city, is that correct?

A. If your objective is to equalize class size this is where the capacity would need to be.

Q. If you used some care in locating those schools you could tend to minimize travel distances by putting them, say, equi-distant between the innercity downtown and the outer-most suburban ring?

A. That is true.

Q. Would you look at metropolitan one-way student movement and reassignment plan, please, sir. I believe I opened it for you. Can you tell me in looking at the pages there, I am not sure they are numbered, the school districts in Macomb, Wayne and Oakland Counties, that receive said aid for transportation in 1969 and '70. Rather than list them by name would you give me first of all the total number of students transported in Wayne County.

A. The total number transported in Wayne County as indicated on page 31 is 63,994.

Q. Can you give me the total district mileage, that is the second last column.

A. 3,795,027.

Q. The percentage, the next column over.

A. The percentage?

Q. 52.6?

[772] A. The column is labled "Number of Students Transported" but the figure is a percentage, it's 52.62 per cent of the total number of students.

Q. Looking at the Oakland County, the same period.

A. The figures are given on page 33, 93,919 transported, the total mileage 4,,606,126; 50 per cent of the students transported, average.

Q. Macomb County?

A. 41,482 students transported, total mileage 3,265,162, average students transported 42.05.

Q. Mr. Henrickson, do you recall during the early phase of this case the Court was advised that although Detroit and cities in general had not been eligible for state aid for transportation that the state legislature had now authorized although it had not funded appropriations, but it had authorized cities to receive transportation assistance, do you recall that, sir?

A. I recall some testimony to that effect, yes, sir.

Q. Do you know, sir, whether or not at the present time the new legislation or new authorization of transportation excludes cities from eligibility?

A. I do not know, not to my own knowledge.

Q. So insofar as the records you have just read from indicating receiving state aid for transportation, if cities [773] in fact were excluded in '69-70 then any city transportation would not be included, is that correct?

A. That's correct.

Q. Would you look at the Southfield school district and tell me how many students were transported in that district?

A. 9559 transported in the Southfield district.

Q. Would you look at Exhibit M 14, and tell me how many pupils shown therein are in that district?

A. I'm not–

Q. Cluster No. 7.

A. 16,367.

Q. Are you reading from M 11 or M 14?

A. I was reading from M 14.

Q. I have 16,346, that is the only correction.

MR. ROUMELL: Isn't that what he said?

A. 16,346 is the number in this volume, yes, sir.

Q. Mr. Henrickson, are you the person responsible for the [792]...

MR. SAXTON: May I suggest to the Court then perhaps we can get some guidance before a meeting of Intervenors counsel this evening or tomorrow. One line of evidence we are considering proposing to the Court, let me state it by way of background, we understood really what we are all about here and perhaps we are wrong but this our understand of what we are all about is trying to bring about equality of educational opportunity for all children and the question is then now one of remedial effect. What is the best means to do that.

The Court found the ill of de jure segregation exists in Detroit and I understand what we are about is trying to do something to bring about equality of educational opportunity and that may take various forms as the Court knows and the higher court suggested busing is merely a remedial tool.

I would suggest and appreciate the Court's viewpoint, one, in line of testimony that we were considering offering was expert testimony based on studies of the effects of systems where desegregation through busing has been employed, the results of those studies being to show that desegregation accomplished through busing has not resulted in any measurable achievement for minority group [793] people and has in fact resulted in some social disadvantages.

If the Court feels that type of testimony would not be helpful to it or runs contrary to previous rulings we would nonetheless like to have stated on the record at some point we have attempted to offer it.

I think it does, your Honor, quite frankly, challenge the efficacy of a metropolitan plan accomplished through the medium of busing. It may be the Court feels differently.

THE COURT: I understand your position and you have a perfect right to stand on that position. But you see I don't confuse one objective with the other although I want to pursue both. You try to put it in the alternative that what we ought to be about is achieving educational excellence and I am for that but I am also under command to do something else and that is accomplish desegregation. Hopefully, if you do one you will achieve the other. I know the tests results differ and there are different philosophies and viewpoints on this but why don't you consult with your fellow counsel and take your position and make your offer of proof and until you present it I am not going to rule on it. I made some suggestions which may be of some help and may not.

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[890] FREEMAN FLYNN,

was thereupon called as a witness on behalf of Plaintiffs, and being first duly sworn by the Court, testified as follows:

THE COURT: Your full name, sir?

THE WITNESS: Freeman Flynn.

MR. ROUMELL: Mr. Lucas, for the record you are calling Mr. Flynn under subpoena; is that correct?

MR. LUCAS: That was going to be my first question, Mr. Roumell.

MR. ROUMELL: All right, thank you.

DIRECT EXAMINATION

BY MR. LUCAS:

Q. You were served with a subpoena by me this morning; is [891] that correct, Mr. Flynn?

A. Yes, sir.

Q. What is your present employment, sir?

A. I am the Director of Inter-Group Relations, which is a Department in School Community Relations, Detroit Public Schools.

Q. Mr. Flynn, is that the same position that you held when you last testified in this case?

A. Yes, it is.

Q. And your duties are essentially the same; is that correct?

A. That is true.

Q. Is there any addition to your vita, such as recent publications that should be noted to update the record?

A. A publication which is a staff journal of the Detroit Schools has an article written by me and my associate, Dr. Rosenberg, in the Winter Issue of this year.

Q. What is the title of the article?

A. The article deals with the problem of textbooks and the adequacy of textbooks for urban city school programs.

Q. You are listed, sir, as one of the persons responsible for the preparation of the plan which was presented to the Court by Dr. Richard W. Morshead of the University of Michigan in Dearborn.

Are you that same Freeman Flynn that [892] is listed in that document?

A. Yes, I am.

Q. Mr. Flynn, how long did it take to prepare the proposal which was submitted to the Court? Not particular days if you will, but simply the time span.

A. Roughly two months, ten weeks. The first portion of that, the major portion of that dealt with the question of the debate between the professionals who were involved in the group as to what the guidelines ought to be, as to what kind of plan ought to be constructed, as to what the dimensions of the plan might be. The actual putting together, the physical manipulation of the numbers perhaps took as short a time as two weeks.

Q. Once you decided whether or not and how far out, then it took two weeks to put it all together?

A. That is true.

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[896]. . .

Q. Would you say, then, that insofar as this boundary and its concern, that there was in your opinion, or the consensus, an orientation more toward Detroit, or a greater community of interest inward than outward?

A. I think I would accept that, that language, yes.

Q. And although there may be some tendency, community of interest or orientation towards Detroit further out, it is a matter of degree.

A. Yes.

Q. Is that fair?

A. Yes. I think that any time –

Q. (Interposing) I am pointing to the west, but I really meant north.

A. I would think that any examination of this kind, and the question of the limitation of boundaries, how far one goes, would have to be a matter of judgment and I don't think that you would get complete agreement. The[897] best you can hope for is consensus.

Q. And would population density play a part in this?

A. Yes.

Q. Are there any different criteria or perhaps more magnified applications of these criteria when we start talking about the northeasterly quadrant?

A. Well, I think the CCBE planners were thinking clearly in terms of the white flight exposition that has been put forward in court here.

Q. Well, you adopted in particular, by agreement or otherwise, boundaries. And my question really relates to whether or not it was a determination on a combination of factors both urbanization, community of interest, orientation towards Detroit, perhaps time and distance, that there were differences to the northeast between the areas excluded and those included.

A. I think so.

There is another dimension. We are having enough difficulty now with the question of boundaries and what they mean and why boundaries are. But if the Birmingham District, which forms a Letter U here, if there were any logic as to geography, why perhaps we would have made a boundary which lopped off or include the – or that portion of the Bloomfield [898] District, in order to make some geographic sense.

Q. What you are saying is you would have straightened out the lines a bit?

A. I think maybe we might have. But that would involve perhaps even more difficulties than we are in right now, with the lines that we have.

Q. Would you say that some of the variations in the line are solely because you wish to keep existing school districts, not break them up into component parts?

A. I think that is true.

Q. Even though they might later be broken up within a new school system, rather than take a piece of an existing district and then not include a part of it?

A. I think that was the rationale.

Q. So you might have a district which is a very or more urbanized section that is closer in, but its outer reaches might be quite rural; they were included despite the rural nature because of the nature of your desire not to divide up a district?

A. I have had no function, no official function, and I am not an expert on the question of school district boundaries except that the boundaries, as you examine them, on the map, bear very little relationship to any other feature of the urban community.

Q. [899] They don't conform in all cases to cities or counties or particular geographic features or any of those things, do they?

A. I have great difficulty in understanding why there is a Clarenceville or why there was a Fairlane or why there are some of the districts which are lister here.

Q. Are some of the districts included within the perimeter suggested within that proposal, K-8 districts rather than K-12, which is the general pattern?

A. The Fairlane School District is a K-8 district. I understand that there has been some move or change to include it in Dearborn. But it has existed as a separate district for some time.

Q. And where, particularly in the Dearborn area, where there's a number of K districts in the past, which has been a pattern of consolidation pursuant to the general State policy?

A. That is my understanding.

Q. And that is to achieve what, better education or quality education?

A. Historically, it's better education and also to achieve what is a State policy. And that is to at least provide a minimum K through 12 district rather than a limited district of 1 through 8.

Q. [900] One of the criteria, also, is to provide a mimimum-sized district?

A. Yes.

Q. Another feature in the proposal submitted to the Court was the exclusion from the desegregation process more or less – as I read it – indefinitely, of the early elementary children.

Is that your personal view, that such should be done, sir?

A. No, it is not.

Q. What is your view on that? I think you perhaps have expressed it in an earlier hearing. How important are the earlier grades, vis-a-vis what happens to the child in a student grade?

A. I think all the evidence indicates that children who are brought together at an early age can be more – sorry, I tangle up my verb on that sentence.

I think all the evidence indicates that it is appropriate to bring young children together to deal with the problems which have to do with prejudice, with stereotypes, with institutional racism, with all kinds of things which our present separation finds itself unable to deal with.

Q. Then, sir, do I hear you in dissent from that limitation [901] on that proposal?

A. Yes. And I think that it is appropriate to say that that committee, again, achieved a report which it felt it could support, and I do support it. As a proposal, I felt at the time that we were preparing it, that all parts of it would be examined carefully and that it would be tested against other proposals, and that those

areas which under close scrutiny and examination could not stand up, would be, would either be discarded or would be not included in the Court Order.

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[904] My objective and my feeling about the matter is that the black community is entitled to have a relatively large representation in any matter which affects them, and that the black student in a school needs to have a significant number of his fellows in the school in order to protect his feeling of self-identity and belonging necessary to a group which has dignity.

Q. Is this particularly true in a transition period where you are going from a situation where you have had segregated schools, to a desegregation process, hopefully leading to meaningful integration? Is your answer particularly true in that context?

A. Let me answer that by giving you an example:

The Ford High School in northwest Detroit had some difficulty a while back.

Q. That is a predominantly white school, is it?

A. It's 31 percent black, and most of the black children come from the east side of the district. And the area immediately around the school is all white.

We have seen this same phenomena at the Finney High School, at Mackenzie some years ago, at Cooley, a number of schools. And when there is racial tension and when there is anger between the two groups, one of the problems is how does the youngster [905] who is black get in and out of that white community safely and securely without being subjected to the irritation and the anger of those youngsters who are temporarily at oddes with him.

At the Ford School the youngsters who were black had to get on the bus to leave the community, under the taunts of white youngsters who were saying "This is our community". And the black kids had great difficulty getting on the bus and leaving, because their sense of dignity was offended, the manhood of the young men was offended. And it did create and is a problem, and it must be dealt with when we do execute any such plan as this.

The schools have got to devise programs and ways to deal with the feelings of young people, and the schools have got to provide ways for the youngsters to learn how to get along with each other and they've got to set up deliberate programs to make sure that this happens.

And to have too few blacks moved into a white community is I think something that I personally would not wish to see.

Q. This is one of the curative factors or one of the factors tending to solve, to mitigate the problem; the fact that [906] the proposals that have seriously been considered here are all two-way plans rather than just black children being brought into white school?

A. Absolutely.

Q. And students perceive a difference, do they not, sir, when it is only black kids being brought out, and white children are not being brought into the schools in the inner city?

A. I believe that that is an expressed and basic factor which I would have to argue for and advocate.

Q. And aren't there studies, particularly dealing with violence situations, tension situations at the high school level which indicate problems with desegregation or with black and white children in the same school often are a product of the fact that they came from all black elementary schools as a group, and all white elementary schools as a group, and were placed together in that high school setting for the first time, in a desegregated setting, together with all the other adolescent problems that children face at that age?

A. There are a great many studies that indicate this.

[907] Q. Is it true, Doctor, that they come in with not only the identification of race but some old school loyalties, "We are the kids from Jones Elementary" and if those kids are all black and the rivalries that result that the children from Smith who are all white make the cleavage automatically on racial grounds or racial lines, doesn't it?

A. I think Dr. Rankin used the term "host and guest" at one point which is perhaps somewhat a fancy term but the problem really is that. It is a question of our school versus you who are not really members of our school.

One principal was so unfortunate I think to use the phrase "resident and non-resident students." We have got to deal with that.

Q. So if you had segregated K through 5 or K through 4 schools and you brought the children out of their all black and all white schools and put them in a desegregation situation for the first time in some respects you are compounding your problems political and otherwise, are you not?

A. Yes. I think again if we were to begin by introducing youngsters at the high school level as we have done in Detroit in several instances we are setting up a number of specific problems which we know a great deal about, hopefully we would be smart enough to deal with if we were [908] to initiate such a plan but the fact is that we are bringing youngsters together who have through the school system and their communities learned some things about each other which are erroneous and which cause great difficulty.

Q. Let's talk a little bit about some of the practices and effects, Doctor. Let's take a factual example. Suppose we have a grade structure in a set of schools of K6 and suppose we only desegregate Grades 3 through 6. Suppose we put 25 percent black children, 25 per cent of the children in Grades 3, 4 and 5 in that school, they in fact will not be 25 per cent of that school building, will they?

A. That is true.

Q. They will be in a very small minority, will they not?

A. That is true.

Q. Do you see some problems there, Doctor?

A. Well, I see some problems but the problems are not nearly the same, however, as they would be if we were doing the same thing in high school at the high school grade level.

Q. Would it not in dealing with the desegregation process if there should be any stair-step approach at all, I take it you would agree first of all that it should not be the [909] high schools only as a start, that it should start in the lower grades, is that right?

A. That's correct.

Q. Both administrative and in terms of presenting a realistic picture of what a desegregated school looks like, wouldn't it be more rationale and sound to do so utilizing the entire grade structure pattern of the service school?

A. If we could do it in the fashion which you have described, I would argue we should.

Q. In other words, if the majority of the schools in the suburban districts are K6 it would be or have many advantages to doing that entire building, the K6 unit as a unit when you do it, isn't that right?

A. Yes. I would like to point out something else, too. I am not sure whether this is responsive to your question. But in those areas where we have bused children in, the elementary levels in Detroit other than the fact that the schools have some problems in terms of individual teachers or some minor problems of adjustment in the community, my experience and the evidence I have available to me indicates that this does not disturb the community to any considerable amount whether you bring children in at the ten per cent or the 15 or 20 or the 25 even the 30 per cent level in the school.

[910] Where we have a great deal of difficulty and emotion in the matter is when the community is undergoing a community change, a housing pattern change. Then we run into problems that we don't seem to be able to deal with but the schools where we –

Q. Excuse me, is that a function in part do you think there is a housing change going on in a particular area and then there is a school change at the same time?

A. Right.

Q. Is it in part a function of the fact that that change is not occurring somewhere else?

A. I think so.

Q. Go on, I'm sorry to interrupt.

A. The only point I was making is that as I think about it now and, by the way, you asked whether or not the function of my office had changed, it has changed somewhat under decentralization, our role is more consultative and supportive rather than a role which gets involved in distinct fire-fighting kind

of experiences and so forth and so on. But as I think back about it, where we have had great difficulty and where there are racial tensions they have to do with housing patterns, not bused children in those schools and not at the elementary level in almost any case.

[911] Q. Isn't some of the hostility run into a function of parents complaining, "Why did you pick our school to bring them in?"

MR. SAXTON: Your Honor, I would like to make an objection. Most of this testimony is Mr. Lucas asking the question and asking the witness to answer yes or no. I understand this witness was called by Mr. Lucas. He certainly is anything but hostile or adversary and I would like to hear the witness's testimony. I respect Mr. Lucas a great deal but most of this has been leading questions and merely ask whether the witness agrees or disagrees and it is his witness and I think that examination is improper.

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[918]...

A. No, it wouldn't. One other source of information which has become available, recent data, there is census data available that could be added to the SES data that was used in the Detroit plan that could be used to verify or to test out the SES data that was used in the Detroit plan.

MR. LUCAS: I have no other question, your Honor.

CROSS EXAMINATION BY MR . KRASICKY:

Q. Dr. Flynn, you have testified that it is important for black youngsters to retain their self-identity and as a necessary element of this there must be other black children in attendance as a supportive thing for it, is that correct?

A. Yes, sir.

Q. Now, would you tell us in your opinion what percentage of youngsters in a particular school classroom give this support so that black youngsters may retain their self-identity, if you can?

A. Again this is a matter of personal judgment. I don't think there is any study or that there is a supporting data I may use to prove my point but I would argue that [919] somewhere in a 20 per cent minimum would be my personal limit.

Q. A minimum of 20 per cent?

A. I would like to move in that direction, yes, at least.

Q. So that in your opinion the clusters that might have 8 per cent black children really are not subject to movement of children because you would eliminate the self-identify of black youngsters if you diffuse them?

A. I think I might join you in that argument, yes.

Q. Would this be your opinion? Would you be opposed to movement of youngsters in a cluster that have only 8 per cent black children in them?

A. Perhaps I better back away and look at your question a little more carefully. If you are talking about 8 per cent children in one school and we are talking about dividing that 8 per cent up even to a smaller degree well, then I would oppose that. If you are talking about 20 or 30 per cent youngsters in one school and no children in another school and a division of that 20 or 30 per cent into 10 or 15 per cent in two schools I might want to take a good long look and say whether or not and discuss whether or not that is reasonable.

Q. Would you look at Cluster 18 in Exhibit M14, which is the Detroit Metropolitan Plan.

[920] A. I don't have a copy of that in front of me.

MR. KRASICKY: Can someone give him a copy, please.

(Handing the witness a document.)

Q. Look at page 5.

A. I have it.

Q. You will note that by clustering the seven school districts together there is an average or could be an average of 8.6 minority members?

A. Yes, sir.

Q. Is that right?

A. That is true.

Q. There are two school districts that have 22 per cent minority members?

A. That's true.

Q. This is close to your minimum, isn't it?

A. Yes, it is.

Q. Each of the school districts have at least some minority members, don't they?

A. Yes, they do.

Q. Would it be your recommendation that youngsters be moved from the two districts that have 22 per cent minority members in order to diffuse them so that each of these districts would have 8.6 members?

[921] Q. You pose an interesting conundrum, Mr. Krasicky. The question is whether or not a school district with nine black children out of 1850 ought to continue in that fashion, whether or not those children who are truly in isolation should continue to be that isolated. The other question is whether or not the 1850 ought to be isolated as whites without any contact with black children. You are posing a question which is a Solomon-type question. Am I going to cut my child down the middle in order that each parent may have a portion.

I don't think I know the answer to that. I do know that I do not believe a white community and white school districts, as I understand them and know them, are adequately preparing either their white or black children if they have small proportions of black children in that district.

I feel this very strongly. I think there is a great deal of data to support that. The question I think really needs to be examined as to whether or not that district should divide up the Mt. Clemens and New Haven children into the other districts now or whether they should be divided over a period of the next several years or whether or not the change in that community would mean that that cluster ought to be brought into the [922] metropolitan Detroit area where there are more black kids who could be shared with them. I want to remind you that there are three basic plans here. The common thing to those plans seem to be more important than those things which the minor areas are deficient in.

Q. I am not suggesting you pick apart the plans, I want to understand your testimony about the importance of black

youngsters maintaining their black identity. I realize we have some competing interests and I want to understand is it more important to the 391 youngsters at New Haven and the 1530 youngsters at Mt.. Clemens for them to retain their minority identity by retaining the group without change or is it more important to diffuse them so as to take into consideration the interest of perhaps the 300 other youngsters in the other districts.

How do you evaluate these competing interests?

A. Well, I think one of the things we might do if you are asking for alternatives to those that have been proposed, an alternative might be to examine those districts very carefully and to withhold the position which would dictate that they do the distribution. If we were to have gone into Livingston County or if we were to use some phraseology that was used earlier there was some discussion of the [923] Mackinaw Bridge. At some point we have come to a limitation I grant you and I would point out that No. 18 is putting us out to the limitations but I do want to remind you that I have been talking about are we going think about where are we going to be 20 years from now; the Doxiadis study, the growth of the metropolitan area, the question of a metropolitan community spreading from Port Huron leads me to believe this question which you are posing for me is one which time is going to have some considerable impact on and that perhaps it is wise to set up the structure at this point in order to deal with it.

Q. I wonder if I could summarize what you are saying this way that while you are concerned with the minority youngsters in the five school districts that after a very small enrollment of minority youngsters you would not necessarily solve their problem by moving youngsters from the other two districts with the resultant loss of identity those youngsters have?

A. If this puts me in conflict with the other members of my committee, my answer to you is, yes, whether it does or not.

Q. Turning to another part of your testimony I believe Mr. Lucas asked you why Woodhaven was excluded and why Van Buren was excluded and I think your answer was "tax base" [924] is that correct?

A. I think that was the judgment we made, yes.

Q. Woodhaven has a high SES district?

A. Yes.

Q. Van Buren, on the other hand, has not?

A. I would hesitate to give a categorical answer but I believe that is true.

Q. Is Inkster included?

A. Inkster is included, yes.

Q. Is that a poor district?

A. It also has a number of poor black children.

Q. Your purpose for including Inkster was to reach the black poor children in Inkster?

A. I think so.

Q. I believe you testified that a school district that does not deal with instutional racism is not providing a quality education?

A. I believe that.

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[931] Q. On PM-6.

A. That is true.

I would alter it and I would – I think I spoke earlier of the fact that there are some areas within that orange perimeter which perhaps more logically might go with Ann Arbor-Ypsilanti metropolitan area if one were to be created, and perhaps there are other areas similar to that.

Q. I notice between the green perimeter and the orange perimter you have Bloomfield Hills and West Bloomfield, is that correct?

A. That's true.

Q. Do you believe they should be included in the metropolitan plan?

A. Yes, I do.

Q. And would you tell us why?

A. Well, I think that the northwestern level of SES which has been put into testimony is accurate and makes a great deal of sense and logic and therefore ought to be supported. That is a high

SES area and does, if I may use the term, deserve to be in the program. It adds a great deal to the total project.

Q. Now, you say it adds a great deal. Would you tell us what you mean by that?

[932] A. The resources of that community, I do not think, ought to be denied to the total metropolitan community. I don't think that that community ought to – or those communities, ought to be left out in terms of participation. I don't think that the children in those areas ought to be denied the experience of having what is – what I have testified is an adequate education. I don't believe that the children in the rest of the metropolitan area ought to be denied the resources in terms of what those children bring to school and what they can contribute to their peers and the resources of their parents in terms of being able to effect a political process, and the total argument which underlies the SES argument.

Q. In terms of Bloomfield Hills – well, let me start this way:

You did mention that in some of these communities that you might consider in a metropolitan plan, you considered the nature of the community?

A. Yes, sir.

Q. Whether it was urban, rural, so forth?

A. Yes.

Q. In relation to Detroit, how would you consider Bloomfield Hills?

A. In relation to Detroit?

Q. Is it part of our urban complex? What do you consider it?

[933] A. Well, considering the number of our leaders, those people who are part of the power structure of this community – that's a word which is kind of a loaded word and I'll try and find another one – but those individuals who have the ability to influence what happens in this total community, Bloomfield Hills, is very definitely a part of the Detroit urban community. The members of that community are individuals who have an ability to affect, greatly, what happens in the urban center.

THE COURT: Mr. Roumell, we have reached the hour. We will be in recess until tomorrow morning at 9:30.

[939] FREEMAN FLYNN,

resumed the stand as a witness herein, and having been previously duly sworn, testified further as follows:

CROSS EXAMINATION (Continued) BY MR. ROUMELL:

Q. Dr. Flynn, I believe we came to the end of yesterday where we were talking about the difference in the perimeters between the Board of Education's proposal and the CCBE proposal, do you recall that?

A. Yes, sir.

Q. To refresh our memories the CCBE proposal is outlined in green and the Board of Education is in orange except that it leaves out the two clusters, I believe 12 and 18?

A. That is correct.

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[945]...

Are you aware that he is no longer a member of the Board of Education?

A. No, sir, he is no longer a member of the Board of Education. He is, however, an influential and important member of our community.

Q. And are you aware that according to the record at Page 13, that he lived at 5340 Kellen Lanes, Bloomfield Hills?

A. I know that Mr. Stephens lived there, yes, sir.

Q. Now, I call your attention again to PM-6, and I am looking at the upper right-hand corner of the perimeters, and I see that between the CBE proposal and the Detroit Board, minus the Mount Clemens Cluster, there is an area called Utica and an area called Shelby. Is that correct?

A. Yes, I see it.

Q. Now, did the CBE proposal include Utica?

A. No, it did not.

Q. Do you believe Utica should be included?

A. Yes, I do.

Would you like for me to explain why it was not included?

Q. Yes, I would.

[946] A. The CCBE plan started with a premise that there ought to be an outside limit, and because the group that was preparing this had not had previous experience in this or because we had not done this particular kind of analysis before, we took an arbitrary limit, made a circle from the center of the community. And as that circle extended itself we, rather than making an arbitrary line, of course, we followed the district which existed. Therefore, we get that puzzle kind of character of the outer limits. But if you do examine that line you will see that it is roughly equidistant at most points.

Q. It is roughly what?

A. It is roughly equidistant from the center of the city at most points.

And in the distinction between that plan and between the Detroit plan, as we went further and as individuals familiarized themselves with the various problems that occur in trying to build up such a plan, it became obvious that there were other factors – which had been included in the CCBE plan. For instance, location of the expressways and surface routes and so forth – and we introduced the concept of the socio-economic status, the combination of the actual [947] demography and the socio-economic status dictated that Utica should be included.

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[973]...

MR. LUCAS (Interposing): I would object to any further questions along this line. It goes to the question of whether or not Mr. Saxton thinks there should be desegregation, whether he thinks there would be any benefit to it. I think that the issue has been litigated to the Supreme Court of the United States, and the question here is merely a matter of plan, not whether or not he thinks there is any benefits to it.

[974] MR. SAXTON: Excuse me. Your Honor, may I note that on October 4th this Court held a meeting between various counsel, and at that time the intervenors were not in the case. And a transcript was made at the meeting held with counsel.

During the course of that meeting this Court said, and I quote at Page 10 in the transcript taken at that meeting:

"I would remind counsel, as I keep reminding myself in this case, that our objective is quality education for all children. I am not concerned about the parties litigant here."

Now, that is the end of the quote.

I have assumed, your Honor, as counsel for the client that I represent, that that is the primary concern of this Court and it should be the primary concern of all of us as citizens of this State and citizens of this country. Our primary concern should not be putting children on the bus to give them a ride; our primary concern should be are we going to give them a quality education.

In that regard, what we are attempting to do is to point out things on this record which the [975] Court may well take into account in measuring whether or not any eventual remedy adopted does lead to a quality education. If that is no longer the primary concern in this case, and it is so indicated, we shall stop pursuing questions that relate to the quality of education and discontinue that line of examination.

To this date I have not seen any evidence that this Court has retreated from its statement of October 4th and its real and abiding concern is the quality of education to be afforded to all schools, regardless of their color, in this country.

I think these questions go to that point.

MR. LUCAS: Your Honor, may I respond?

That is a strawman raised by counsel, and he injects the new political curseword of busing. The objective here is not busing, but desegregation of the schools, ending the racial segregation of the schools and the community. And how the children get to school is merely a matter of providing the transportation if it is too far to walk.

I think he betrays his interest by referring to busing as if that is some magical thing in itself. No one that I know of has made a serious brief, [976] although there is some comment that busing is not particularly harmful, that it does expose people to do things, but that that is the educational tool, it is really the vehicle to get there by. And I think everyone has agreed that that is what is at the end of the line.

But if the differential is that desegregation does not equal what counsel may deem to be quality education, then we think it is not relevant. He is trying to relitigate Brown v. Board of Education. I think that integration, desegregation of the schools is the first requisite, and that is the legal basis for this case. We are not in here because of some theoretical basis. And arguments about SES and all those other things are interesting, but the legal basis for this Court's authority and for our Complaint here is the segregation of racial separation of students.

MR. SAXTON: You Honor, I would just take a brief minute to respond here.

THE COURT: Yes, and let's make it the last response.

MR. SAXTON: All right.

THE COURT: We will keep this tennis ball going for three sets, and it is too long.

MR. SAXTON: I agree with that, your [977] Honor.

I only want to note that Mr. Lucas has a real bent for expanding the term desegregation far beyond the perimeter the higher courts have indicated it means.

As I understand it from a legal posture, desegregation means removing any legal or other barriers which preclude one from attending a school district on account of their race. Now, that is basically what desegregation is. We are now talking here about how to cure the constitutional impairment found by this Court, of Plaintiff's right, and that may refer to transportation or other matters to be determined by this Court. But I still submit, your Honor, that the basic problem is not desegregation just for that purpose. Indeed, Dr. Rankin testified that that alone would accomplish nothing. But the basic premise here is, after we get all through with whatever this Court does, are we going to provide equality of educational opportunity for all children and a quality education.

THE COURT: Well, let me make the first point.

I have suggested before what we are [978] about at this stage in this litigation, and I think you insist, Mr. Saxton, on reopening a question passed long ago. This is April 7th, 1972 and not October 4th, 1971. I think you are arguing the point that

desegregation will not result in quality education. That is your point as I understand it.

MR. SAXTON: My point is that –

THE COURT: That is a matter that is no longer open to question in this case. What we are about is what metropolitan plan will do the job.

MR. SAXTON: May I ask, your Honor, what job? The job of quality education or the job of equal education?

THE COURT: Well, both, as I have said before.

MR. SAXTON: Well, if that is so, your Honor, I submit if quality education is still in the picture, our examination is proper. That is the point we are trying to demonstrate.

THE COURT: Yes; with relation to the size and expanse of the metropolitan plan, and only that far.

MR. SAXTON: Yes, sir, right.

THE COURT: I agree with Mr. Lucas that [979] Brown disposed of our question long ago, 1954.

MR. SAXTON: Well, your Honor, I would respectfully –

THE COURT: And if it's changed it mind – I mean the Supreme Court might change its mind, but it hasn't done so, so far. So what we are about is the metropolitan plan. And the matter of re-litigating the issue of whether you have to have desegregation is no longer in issue in this case.

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[994]...

THE COURT: You see, I feel I am in a position where I can take no position except that which is commended to me by the decision of the higher courts. It is as simple as this. They say when you find segregation you have to go about the business of desegregating. That is what I am trying to do.

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[999]...

Q. What is it?

A. I can point it out very shortly.

Q. What is it?

A. You have it in your hand there, it is approximately 47 or 46 and a half, I think, in terms of the standards course.

Q. Memford constellation is 46.5?

A. I think it is in that range, yes, sir.

Q. Do you know how that ranks in terms of all of the constellations in Detroit?

A. It is above the average and below the maximum.

Q. Above the average and below the top?

A. That is right.

Q. All of the various constellations, I believe there are 16 of them set forth in the Defendant's Exhibit M-14, do you know in those terms whether it is number 2, 3 or 4?

A. I do not know the precise location.

Q. But you do know it is above the average?

A. I believe it is, yes.

Q. You believe?

A. Yes.

[1000] Q. During your tenure in the Detroit School system, Dr. Flynn, was there ever a time when the constellation of the geographical area served by the Mumford constellation was not a predominantly minority make up?

A. It depends on what you mean by minority. At one time historically it was a Jewish community and prior to that –

Q. Let's put it in terms – I don't know under the law the Jewish religion is deemed to be a minority.

A. In terms of your question, yes, there was a time when it was not a minority.

Q. Do you remember when that was?

A. Yes, sir. From the time the school was built which was shortly after World War II until the 1960's.

Q. Since that time it has become predominantly black,95 percent almost?

A. Yes.

Q. In your opinion, is that accounted for by black people who have improved their own socio-economic status by moving into that area from other areas?

A. That is true.

Q. That is true?

A. It is.

Q. You have mentioned that some of your plans or your CCBE [1001] plan and the State Board plan – or the Detroit Board plan, were drawn at least in part with the idea in mind of restricting or inhibiting what you call white flight?

A. That is true.

Q. Is that correct?

A. Yes.

Q. How about black flight, does your plan take that into account or attempt to restrict blacks from allevating themselves in terms of neighborhood environment?

A. At some point I think that we might have an interesting problem there.

Q. At some point?

A. Let me describe something which is obvious to you I'm sure. The black community is made up of a community which has very broad poor base and it described a pyramid, something like this (indicating) rather narrow middle class and very narrow wealthy community.

The white community has a broad base of poor people but it has a much broader middle class and a relatively broad affluent upper class group in terms of numbers. Until those communities, the black and white communities come into congruence in terms of the way they reflect the total economic picture of this nation, this society, the problem which you have [1002] described for me is not going to be a very serious one.

Q. But would your plan contemplate though if blacks do move from the areas they are now in as they did in the case of mumford –

A. Yes.

Q. (Continuing): Would you require them to be bussed back into these areas?

A. As I say that is an interesting problem. We might find ourselves doing that, yes.

Q. You haven't addressed yourself to that one yet?

A. Not really.

MR. SAXTON: Thank you.

A. You are welcome.

THE COURT: We will take a short recess at this time. I intend to go somewhat past the hour of twelve because I have a business engagement this noon and then we will reconvene hopefully at two o'clock and not any later than that.

We will be in recess for a few minutes.

(A recess was taken.)

[1003] THE COURT: Mr. Condit.

CROSS EXAMINATION BY MR. CONDIT:

Q. Sir, do I understand that perhaps you previously testified in this matter other than yesterday and today?

A. Yes, I did.

Q. Just very briefly your educational background is that of a doctor of education, is that correct?

A. That is true.

Q. And I think you indicated that you did your discertation on the gifted child, is that right?

A. Yes.

Q. What was your master degree in?

A. American History.

Q. Your bachelor's major?

A. I received a Bachelor of Science in Social Studies as a major.

Q. Your doctorate was in what field?

A. Educational curriculum.

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[1023]...

Q. If the Court order in this case should restrict the construction of new school facilities as I suggested in my question to Mr. Henrickson, might that not change priorities and perhaps make distance or some other urbanization factor of greater weight than was decided because of your inclusion because of the white flight factor?

A. Yes. And I do not believe that either of the committees seriously debated the question of and the impact of a possible Court order limiting the construction as you described it.

Q. In other words, that alternative, in combination with the criteria, had not been considered?

A. I do believe that we discussed it but I do not believe [1024] that we discussed and saw it in the dimensions which have been discussed here in this court.

Q. Mr. Roumell asked you about Bloomfield Hills and you talked about the wealth of the community. Did you feel that not including particular districts was excluding a particular class of people; was that the concern that led to their inclusion?

A. I think perhaps yes, a particular class of people. I think I was thinking more in terms of the leadership that exists in that community, the individuals who can achieve change in our time, in our society, individuals who command great resources, individuals who are influential in the decisions which affect the total urban community. And I think that those individuals ought to be involved in the decisions which affect the future of the schools and the children.

Q. But you also agree with the submission of the Detroit Board to the Court which spoke to the question of exclusion of high income people from areas of the desegregation plan and inclusion of poor white and – poor white, in the main, as being a deficiency in a plan?

A. I would object to the exclusion of a community that had a high SES status and the inclusion of a community that had a low SES status, yes.

[1025] Q. Part of Bloomfield is a part of the Pontiac District?

***

[1085] ROBERT L. SMITH,

was called as a witness by Plaintiffs, and being first duly sworn by the Court, testified as follows:

THE COURT: Your full name, sir?

THE WITNESS: Robert L. Smith.

DIRECT EXAMINATION BY MR. LUCAS:

Q. Mr. Smith, what is your educational background?

A. I have a master's degree from the University of Michigan in Civil Engineering, specializing in transportation planning and have completed all of the requirements except dessertation of a PhD degree.

Q. In what field?

A. Civil Engineering and specializing in transportation.

Q. Where are you employed?

A. I am employed with the Southeast Michigan Council of Governments.

Q. Are you familiar with the TALUS Study?

A. Yes. I am a former employee of that study.

Q. I will show you a document which has been identified as Plaintiffs' Exhibit M 8 which purports to be a travel time taken from the TALUS Study. Can you tell us generally what travel time studies are as used in organizations such as yours? What is it? How do you go about making one and how is it represented on the chart generally?

A. Basically for the purposes of regional transportation studies we develop computer representations of the regional highway network which include freeways, major arterials, minor arterials, and even local streets and then as part of the developing a long range transportation plan we utilize home interview surveys and surveys of travel speeds on the existing highway network to come up with plans for the future highway plan.

Q. Is this a commonly accepted tool in planning in general?

A. That's right.

Q. City planning agencies, regional planning agencies use this technique as a regular practice?

A. That's right.

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[1091]...

MR. LUCAS: Would you answer these gentlemen's questions.

CROSS EXAMINATION BY MR. KRASICKY:

Q. Was the survey made in the spring of 1969 or fall of 1969?

A. Are you referring to the TALUS Survey?

Q. Yes. Where the red line says it takes 50 minutes was that done in the spring of 1969?

A. The TALUS Study came up, it was done, the survey home interview survey was made in 1965 over a six or eight month period and then a transportation network was developed, a highway network was developed representing 1965 and another one was developed using essentially the same base data for 1975. The same base speeds that were developed in 1965 were utilized for 1975 with the inclusion of the additional freeway facilities and some additional major arterial facilities.

Q. So what you are indicating to us is that all of the trips that were taken and studies made was done in 1965, is that correct?

A. That is correct.

Q. Let me see if I understand you. Is there a central point [1092] of beginning?

A. Yes.

Q. For each color gradation, is that correct?

A. Yes.

Q. Where does that central point begin?

A. The downtown area, the center of the central business district.

Q. Anywhere in the downtown business area?

A. The central business district is generally assumed to be bounded by the freeways and we have taken, say, the foot of Woodward or that general area to be the point of origin.

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[1137]...

COLLOQUY – MOTION TO QUASH SUBPOENA

Q. Was any study made during the wintertime, to your knowledge?

A. I'm not sure.

MR. KRASIKCY: Thank you.

MR. ROUMELL: One question, your Honor.

[1137] May it please the Court, good morning, your Honor.

Yesterday at about 10:35 a.m. Eastern Standard Time, Charles Wells of the office of Pupil Personnel Service of the Detroit Board of Education was served with a subpoena. The subpoena in part reads:

"Bring with you all records for the past two years concerning incidents involving damaged property, safety of the pupil or staff whether perpetuated by other pupil staffs or outsiders, criminal activities or fires in or on school property as regard each school in the Detroit Public School System."

Mr. Wells has responded to the supoena. He is in court presently. Mr. Wells is sitting in the second row, your Honor.

However, at this time we would like to move to quash this subpoena on behalf of the Board of Education for the City of Detroit, of Mr. Wells.

Now, I will be very glad to hand a copy of the subpoena up to the Court, if I may, please.

(Whereupon said subpoena was handed to the Court.)

[1138] THE COURT: Proceed.

MR. ROUMELL: Your Honor, again, we believe that this subpoena is most oppressive. It asks for all records for two years. We are dealing with young people who are growing up and it's been our policy in the School Board that although we do keep names, we have never revealed those names even to the Police Department. It is only an internal audit, and of course our business is education and we are here primarily to rehabilitate people. Therefore, we think that part of the subpoena should in no event be honored.

Second of all, your Honor, we do have a summary of these, and they happen to be here. We admit that to the Court. However, we do not believe that this is relevant and material. The Intervenors for their own reasons chose to come into the case late in the history of the case. We are here talking about a metropolitan plan; we are not here talking about what building may have some problems in there, we are not talking about the usual scuffle between youngsters in school that we have all experienced. I have sat under the teacher's desk a couple of times myself when I was young. And I don't think this is relevant or material and, furthermore, I think it is oppressive and, thirdly [1139] I think that the identify of the youngsters involved should be kept anonymous as we always have done in the history of the School District.

And for all these reasons I ask that the subpoena be quashed and that the Intervenors, as well as ourselves, as well as the Plaintiff, get on with the job of exploring an adequate metropolitan plan.

Thank you very much, your Honor.

MR. LUCAS: May I address the Court?

THE COURT: Yes.

MR. LUCAS: Plaintiff opposes this subpoena and motions to quash, your Honor. It may not be oppressive if it were relevant. If it were relevant to the issues of what kind of plan should be implemented, not to whether or not a plan should be implemented, then I think that although it might be difficult, Defendants should be required to do it, no matter which party is asking for it.

But the Court will recall, Plaintiffs objected to this type of interrogation, because frankly, with all candor and all due respect to counsel, we think it's pandering to racial fears, propagandizing racial hatreds, and it's just an attempt to inflame and stir up the community.

[1140] The Court will recall the testimony of Dr. Flynn about how incidents between two white children or between two black children are not considered incidents, just normal conduct, nothing unusual about a fight between kids. But whenever it is

cross-racial, why it's inflamed both in the minds of pupils and teachers, and certainly when it gets to the media it's bandied about? "Another reason why you shouldn't desegregate."

For that reason we would join in the Detroit Board's motion to quash.

MR. SAXTON: May we respond, your Honor?

THE COURT: Yes.

MR. SAXTON: Your Honor, the subpoena was issued by my office and does request that information set thereon.

I think it is unfortunate that Mr. Lucas is the one that is trying to turn this case into racial incidents. We are not; we haven't mentioned that. And I think it's an allegory on Mr. Lucas' part.

We asked for information not about anybody's race, not about who had any troubles or whether they were black or white or whatever else they were; we asked the Detroit Board for information contained in their [1141] records.

Now, obviously, if it important enough for them to keep a record, it must have some bearing on the educational process; otherwise, why would they keep records.

We did not ask them to go out and make any documents or accumulate any studies not already in their files. We also, your Honor, do not intend to ask that the names of any individuals be revealed. We can alley Mr. Roumell's fears on that. We think that would serve no purpose whatever. We do not request that any individuals' names be revealed whatever.

Now, it is indicated by Mr. Flynn, in cross examination the other day, that some of the incidents involved in the Detroit Schools are not just mere scuffles between children, when we have to chain the doors of the schools to prevent attacks upon students and teachers. That goes beyond scuffles of children. As Mr. Flynn noted in his testimony the other day, there are incidents where black children indeed have had apprehensive fears. He named the Ford High School, about going into that community. He was asked if might not other people have the same apprehensions if the communities were not safe.

[1142] But I point out to the Court that one of the things I think that all courts have noted who have passed on this question, is the safety involved in desegregation orders where induced busing is also part of the order. And all this evidence does it point out to the Court some of the problems that may have to be dealth with.

I think I indicated before that there is something I find very disturbing in this case, and that is that the apparent idea that because the Court has said we are going to have a metropolitan plan, the only evidence that this Court can receive is evidence that's favorable to that conclusion. I submit that's a rather novel approach to judicial process. Evidence should be able to be introduced which is both contrary and favorable to that proposal and then the Court will weigh all that evidence and accordingly decide what proposal it wishes to adopt, what perimeters the proposal will have and what remedial features it will have in order to take care of such things as safety problems, community relations and so forth.

We think the evidence is relevant as to the possible safety problems that have been encountered in the past and might be involved in the future.

[1143] Now, obviously, the subpoena was not oppressive, because Mr. Roumell said the man is here, and the records, and he doesn't look like he's either bent nor bowed. So I would say it's neither physically nor judicially oppressive inasmuch as he is here with us.

Again, your Honor, we do not ask that anybody's name be revealed. We think that the information is relevant, it will be part of our offer of proof that we intend to advise the Court of later, and we think the weight to be offered to it is for this Court to decide, and what part it will play in the Court's determination is also for the Court to decide. And we think it can be again said, your Honor, that matters affecting the safety of young children who are coming into Detroit or a metropolitan district, are relative to this proceeding. That's what this proceeding is all about, is children.

THE COURT: Well, it seems to me that the matter properly is a part of the offer of proof, a matter which the Court I assume will some time today entertain. And we will pass upon the motion

to qush the subpoena in connection with that ruling.

MR. ROUMELL: Thank you very much, your Honor.

THE COURT: I think we have at hand [1144] the business of completing the proofs of the Plaintiffs?

MR. LUCAS: Yes. If the Court will indulge us, we seem to have lost Mr. Lamson. We assumed, your Honor, that the offer of proof was going to be made at this time, which is why we didn't have this up.

THE COURT: Your witness is not here?

MR. LUCAS: Mr. Lamson has stepped out. He was here a few minutes ago, your Honor.

THE COURT: He was here?

MR. LUCAS: Yes, sir, he was. He brought these over and stepped out for a moment.

THE COURT: Well, are there matters about which there is likely to be any dispute or any need for explanatory testimony?

MR. LUCAS: I don't think so, your Honor. We have an overlay showing some clusters, that was prepared by Mr. Lamson, but I think Dr. Foster can explain it if there is no objections to it.

THE COURT: Why don't we proceed and see if we can get by with Dr. Foster.

MR. LUCAS: All right, sir.

[1145] WILLIAM LAMSON

resumed the stand as a witness herein, and having been previously duly sworn testified further as follows:

REDIRECT EXAMINATION BY MR. LUCAS:

Q. Mr. Lamson, you have previously been sworn. Did you prepare at our request some additional overlays to go over the set I think begins with PM-2?

A. Yes, I did.

Q. I would like to mark at this time for Identification the second underlay entitled "Plaintiff's Proposal" and the next yellow line which shows the perimeter as PM-11.

(Two overlays were marked Exhibits PM-10 and PM-11 by the reporter.

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[1146]...

GORDON FOSTER

resumed the stand as a witness herein, and having been previously duly sworn testified further as follows:

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[1164]...

Q. (By Mr. Lucas, continuing): Dr. Foster, what is the percentage of black students based on the 70-71 data in the area enclosed in Plaintiff's proposal?

A. In the total area?

Q. Yes.

A. My figures give 197,313 black pupils.

Q. What percentage is that of the total?

A. 25.3 percent of the total.

Q. And that is reflected on the last page of the exhibit; is that correct?

A. That is correct.

Q. Dr. Foster, what is your understanding of the percentage [1165] of black in the tri-county area?

MR. SAXTON: Well, I would like to object to it if it is his understanding of it. If he knows what it is, I think that's all right.

Q. (By Mr. Lucas) From the pupil data that you have seen, Dr. Foster.

A. My recollection, approximately 20 percent.

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A. Yes, I did. I don't have the number of it.

Q. Do you have it with you, would you check, please?

A. Yes. M-16 I believe. Is that correct?

Q. Yes, I believe so.

You did have that before you during the preparation of the exhibit; is that correct?

A. Yes, I did.

Q. Can you explain in sort of a detailed way, Doctor, how you went about making the clusters that are on the exhibit. Can you tell us if you tried to follow in any degree the clustering, both technique and the actual clusters, suggested in the Detroit Board plan?

A. My major objectives were to take into account the time [1166] and distance involved in the clusters, of transportation, and to try to lessen that if possible and achieve the greatest desegregation at the same time, the greatest amount of desegregation.

I started out, essentially I think, using the Board's technique of sort of non-contiguous, sometimes contiguous or whatever you want to call them, skip zone clusters. As I understand the Board's plan, it was developed as much as possible along thoroughfares in the metropolitan area and/or interstate highways, and it was developed with this in mind in an attempt to make maximum use of available freeways and other large thoroughfares.

Q. Is skip zoning a common technique in desegregation plans? Although this happens to include districts, is it a commonly used device?

A. Yes. If you have a certain geographical region that you are trying to desegregate, you usually have a buffer area between white and black residents, which may fall anywhere in the area. But usually in drawing up a plan you start with this and then you work your way out. It's sort of difficult to describe, but you can start in the center and work your way out equally and arrive at the extremes of both ends, or you can do what I think [1167] this would be called, skip clustering, and keep your distance the same as you work your way out each side.

Q. Doctor, except in this case, using districts and high school constellations, is this not generally characterized non-contiguous zoning?

A. Yes.

Q. Did you use the Detroit clusters at all or were you able to use them in the perimeters?

A. Well, except for the Mount Clemens –

May I step to the map?

Q. Yes, please.

(Whereupon the witness approached the blackboard.)

A. I started up in the eastern section of the city with the southeastern zone, much as the clusters are numbered, and sort of went around the perimeter of the city in a counterclockwise rotation, and did use the School Board's plan of clusters as sort of a base.

Q. For example, Dr. Foster, the Grosse Pointe is the King constellation, and Grosse Pointe is East Detroit, Cluster 2?

A. That's in black, yes.

Q. Is that similar in any way to the Detroit plan as shown in M-12?

A. I believe they are identical, East Detroit, Grosse Pointe and King, in orange on the Board's plan.

Q. In general, where it would fit within the different perimeters, did you attempt to use the clustering that they had suggested?

A. That's correct.

Q. All right.

A. Then we proceeded north, around the perimeter, and north and west. And we essentially made judgments as we went around the edges, in terms of distance and time traveled, and where the time seemed to be rather extreme, something over 40 minutes, then we made, tried to make a judgment as to whether the inclusion or the exclusion of a particular district would affect desegregation favorably or unfavorably. That is to say, whether it would increase it or decrease it.

Q. When you say increase and decrease, do you mean to the effect the question of whether or not it was substantially disproportionate?

A. That is correct.

Q. Disproportionate to what, Doctor?

A. Disproportionate to your normative figure of around 20 to 25 percent at that time. And then we came out at 25 percent black.

[1169] Q. Which relates to what other figure in the tri-county area?

A. Well, the total percentage of black in the tri-county area.

Q. All right, go on.

A. And we attempted to make a judgment in each case around that perimeter as to whether the inclusion of the lengthier distant districts, as I say, would help our plan or hinder it.

Q. When you say help or hinder it, in what context? This may be repetition, but let's make it clear.

A. Make it approach the normative figure that we were using, of the percentage black in a total metropolitan area.

Q. Did you try for exact mathematical racial balance, Dr. Foster?

A. No, sir.

Q. Go on.

A. And so as we came to each one of these – the blue line, for example, on overlay – Plaintiff's Exhibit M-8 I believe, marked travel time in minutes – the blue line represents from center city, a sort of 40-minute strip that it takes to travel that distance; which has been worked out by, I believe, an organization called TALUS, T-A-L-U-S.

[1170] Q. The TALUS Study, I believe.

A. Yes. And the red line marks 50 minutes. That's to the outer perimeter.

Q. Is it your understanding that those are average times, Dr. Foster?

A. That is correct.

And we sort of eyeballed these strips, and at the same time took the data that's on Exhibit M-16.

Q. That would be the examples of the most distant transportation runs offered through Mr. Henrickson.

A. That's correct. For example, to illustrate this, a distance noted from Joy Junior High School to Chippewa Valley School, which is just short of the 40-minute blue line, was noted as 52 minutes of travel time; 21 miles. On the basis that the inclusion or exclusion of Chippewa Valley would not serious impinge on our desegregation effort, we made a decision to exclude it.

The same is true of the district immediately to the west of Chippewa Valley, Utica, on M-16, in the first page. This is marked as 16 miles from Utica to Kettering and 31 minutes – but I believe that's maybe a misprint, because on the next page the same run is recorded as 40 minutes, which I believe is a little more realistic, as part of the Utica zone does [1171] fall on each side of the 40-minute TALUS line.

And on this basis Utica was excluded from our proposal.

I might give two more examples to the immediate west, of Utica, where you have Bloomfield, West Bloomfield and Avondale.

Q. That would be Cluster 8.

A. Right. Only Avondale is excluded, and Bloomfield and West Bloomfield are included. This was a matter of judgment on our part. The blue 40-minute line from TALUS runs pretty much through the center of the West Bloomfield area and to the north of Bloomfield. However, if you will look at Cluster 8, without the inclusion of Bloomfield Hills and West Bloomfield the cluster would be disproportionate in percentage black to our total metropolitan area. And so on that basis we decided to include those two districts.

[1172] Q. Doctor, were you also trying to avoid splitting the school districts?

A. Yes.

Q. West Bloomfield District is crossed by the 40-minute travel line, is that correct?

A. That is correct.

Q. Go ahead.

A. Well, then we proceeded simply the rest of the way around the city with the same sort of judgment either including or excluding according to the factors of time and desegregation.

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[1177] Q. That was the substance of your testimony with respect to the Detroit plan we presented, is that correct?

A. I believe it was, yes, sir.

Q. Doctor, the CCBE plan excludes, I gather, more or less permanently Grades K through 4 from a desegregation point of view. Would you support that position?

A. I think I have testified previously that I would not and research indicates that the inclusion of early grades is very important in the total desegregation effort.

Q. Dr. Foster, do you know of any administrative obstacles to implementation of K through 6 in September of the proposal as suggested to the Court, M-10 and M-11, that is PM-10 and 11?

A. Well, there are obviously administrative to anything you do. I think it is a question of judgment on whether or not an operation like this could be foreclosed by September. In my opinion I think it probably could without examining in close detail some of the transportation facilities available and this sort of thing. I would guess roughly this would involve, I believe, something like 400,000 or 420,000 children.

Q. That would be the total enrollment in grades K through 6 in this grouping?

A. Very roughly, yes. This would be simply taking a [1178] division of the total number into the grade and presumedly if we used a ball park figure which seems to work out rather consistently in city desegregation of around 40 percent plus or minus transportation, this would run out at in the neighborhood of 160,000 to 170,000 children who would need transportation.

I haven't examined the capability of the metropolitan area to support this sort of transportation by September. This factor –

Q. You have not examined that factor at all, is that correct?

A. That is right. Assuming that this factor could be taken care of I see no reason, administratively, why such a plan could not be taken care of by September.

Q. Dr. Foster, assuming an implementation of Grades K through 6 in September based on the assumption that the defendants can show the Court justification in not doing all grades, from your examination of the suggested government plans

for the proposed area covered by the metropolitan desegregation plan, have you any recommendations for the Court?

A. Well, it seems to me that some sort of governing board needs to be provided, some interim authority. Different schemes have been suggested.

Q. Let me ask you, first, assuming that you don't do all of [1179] the grades the first year, would you be in favor of retaining the existing school district boundaries at least for that year?

A. I think in an interim period it would be advantageous to do so and then establish some sort of over-arching desegregation authority which could possibly be made up of, let's say, the intermediate zone superintendents, the intermediate district superintendents.

Q. Your understanding is there are intermediate superintendents for each of the three counties?

A. I believe so, yes.

Q. All right.

A. And/or some people appointed by the State Board of Education if this seems adviseable. I would imagine a board of five to seven people would seem reasonable and any number of combinations might be worked out so that the Detroit City Board would have representation and the intermediate districts and State Department or the State Board of Education rather.

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[1180]...

Q. Dr. Foster, let me see if I understand your testimony correctly. You plan does two things –

MR. LUCAS: Could you keep your voice up please, Mr. Krasicky?

MR. KRASICKY: I will try.

Q. Your plan is based upon two premises, one to achieve the [1181] maximum desegregation?

A. That is correct.

Q. Is that the prime emphasis of your plan?

A. I would say to achieve maximum desegregation and I think I testified with the other criteria thrown in of reasonable time involved in transportation.

Q. Of these two elements which was the most important in formulation of your plan?

A. I'm not sure that either –

Q. Are they of equal weight?

A. They work together.

Q. Are they of equal weight?

A. I think both came into play in deciding certain key districts whether they should be included or excluded.

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[1189] . . .

Q. Do you have a recommendation as to what that ratio ought to be, within limits?

A. No, I haven't given any study to that. And I think that figure would be pretty much conjecture absent some testing of the clusters. My hope would be that a plan could be developed which would not deviate more than five percent, let's say, from the cluster figure.

[1190] For example in Cluster 1, the percentage black students is 24.3; what I am saying is that I would hope that a plan could be developed which would fall within a plus and minus five percent of that. But I certainly couldn't do any more than hope, without getting into it.

Q. I understand. But under your suggestion no school in the cluster should have more than 30 percent black students.

A. No, I didn't exactly say that. I said that I would hope that you would set up this sort of guideline, and then you would simply have to proceed with your planning and see what happened.

Q. If you were to do it would you do it that way?

A. The way I just described?

Q. Yes.

A. I would have a figure in mind, a deviation figure, and then I would proceed with working out the total cluster and see what developed. In other words, I would not specifically peg a figure and tailor my desegregation plan to that figure. And I think usually, in my experience, it works out that your desegregation projections, of necessity, depending somewhat on capacity and one thing or another, will fall within a reasonable range.

[1191] Q. Could it be as much as 10 percent deviation?

A. I don't have any idea until I would do it.

Q. You don't want to stick with your 5 percent.

A. Pardon?

Q. You don't want to stick with your 5 percent.

A. No, I said I thought if I were doing it I would start out with that as a guideline.

Q. That as a guideline.

A. Right.

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[1193]...

Q. Anything is possible.

Directing your attention to Cluster Number 6, Detroit Murray has a black student population of 73 percent, Highland Park has a black student population of 85 percent. Is that correct?

A. According to these figures, yes, sir.

Q. And it is contemplated that black students from both of those school constellations would be bused into the suburbs.

A. Presumably, yes.

Q. Why was Highland Park added to Cluster 6?

A. May I step to the map?

Q. Sure.

(Whereupon the witness approached the blackboard, then returned to the witness stand.)

A. I think my answer to that would be that it is juxtapose between Birmingham, Hazel Park, Royal Oak and Murray, or if not Murray, some other Detroit constellation. But in this case Murray – and if we start with the three zones that are outside the

city, saying that Highland Park is really not a part of the city but it [1194] is within the framework – the percentage black with Murray would be disproportionate to the system as a whole by a considerable amount, and in order to make it reasonably proportionate another district with a fair number of minority group children would have to be added to the cluster. And I assume this is why I decided that Highland Park would fit into this pattern.

Q. Now, if you omitted Highland Park the cluster would have a black students percentage of a little over 10 percent, wouldn't it?

A. I would say roughly, yes.

Q. Directing your attention to Cluster 5.

A. Five?

Q. Five.

A. All right.

Q. Now, the average black student population of Cluster 5 is 26 percent, is that correct?

A. Yes.

Q. Now, Hamtramck has a black student population of 28.7. Is it contemplated that you would move black children out of Hamtramck so that you would draw the percentage down to 26 percent?

A. I think that's impossible to tell, without taking the total cluster into consideration. It's conceivable that [1195] it might be left as it is. You would simply have to make decisions after you examine the data for the total cluster.

Q. Directing your attention to Cluster 15. You are pairing Northern with the downriver school districts, are you not?

A. Yes.

Q. Do you have any idea how long it is going to take the youngsters from Northern to get to Southgate and Allen Park?

A. The School Board clocked Murray to Southgate at 30 minutes.

Q. At what time of day?

A. Departure at three o'clock, arrival at 3:30, weather conditions clear and dry.

[1196] Q. Where is Murray in relation to Northern?

A. Murray is south of Northern on the river. I think according to our TALUS zones it falls well within the 40 blue zone on the map, so I don't know, putting these two figures together I suppose a reasonable estimate would be 30 to 40 minutes somewhere.

Q. Isn't the TALUS study based upon a central point in the downtown business area out to the line?

A. Yes. Northern would be north of this a bit.

Q. Several miles, isn't that right?

A. Well, I believe not too far.

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[1233]...

Q. The rest of it is '70-'71 but the particular cluster is 71-'72, is that it?

A. That is correct. What happened was we used '71-'72 data originally until we found, and I'm speaking again with the editorial quote "we" that I had the district data from outside the city while it was marked as testified to in Court one year was actually the year before. So, in order to be consistent I had to go back and change my figures making the entire proposal on the same data base except for this one which I felt should stay because of [1234] the black infusion. You asked the question why did I separate Cadillac from Cooley, is that correct?

Q. Yes.

A. The reason for that was that there was a considerable disproportionate in Cluster 12 and it stood and Cluster 9 and by separating Cadillac Junior High School plus an estimated one-fifth of Cooley which was sort of an arbitrary figure but fairly close, I gained 2,526 blacks in Cluster 12 and diminished that number of blacks in Cluster 9 thereby having both Cluster 9 and Cluster 12 less disproportionate than they would have been otherwise.

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[1239]...

Q. Dr. Foster, just before Mr. Beer concluded his cross examination I believe he asked you why you split up part of the Cooley constellation. I believe you took one-fifth of the Cadillac Junior High School and one-fifth of Cooley and deleted them from what is now denoted as Cluster Number 9 on the Plaintiff's exhibit, and you included them in Cluster Number 12. Is that correct?

A. Yes.

Q. And as I understood your response to Mr. Beer, the reason that you did that was in trying to stay with your norm factor of 25.3 percent black balance, and that they would have come closer to that than it would have by leaving the entire Cooley constellation in one or the other of the clusters; is that correct?

A. I believe the figures would indicate there would be less disproportion this way, yes.

Q. Well, in other words, am I fair in saying that the reason you did that was that way you were able to come closer [1240] to the 25.3 percent norm you testified about?

A. Yes.

Q. All right. I wasn't very good at mathematics in school, I probably won't be very good at them today, Doctor, but let me ask you this:

Basically, as I understand your testimony, you came to Detroit yesterday and you sat and got down to work and you worked out a plan which has as its primary predicate achieving a 25.3 percent racial balance within the metropolitan area, consistent with what you consider to be reasonable travel time. Isn't that about it?

A. Not quite, no, sir.

Q. Pardon?

A. Not quite, no, sir.

Q. All right, what other factors, then, did you take into account?

A. Well, it isn't simply a question of other factors, but I think you misstated my premise. My intent was not to achieve balance

but to minimize disproportion from the normative figure. And I think there is a difference and a distinction between the two statements.

Q. All right. Well, let's not get into an argument over semantics, let's see if we can word it another way then:

[1241] What you tried to do was come as close, looking at your exhibit and from your previous testimony, is to try to come as close as possible to achieving what I believe you described as a norm of 25 percent plus or minus 5 percent in each cluster, so that you would have a mix of 75, roughly 75 percent white, 25 percent black, give or take 5 percent?

A. Well, again, it's semantics but it's more a problem of not straying too far from the norm, than it is trying to come as close as possible. It's a subtle distinction but I think a very important one.

Q. Well, whether it's not to stray too far or come as close, the norm was 25.3 percent; is that right?

A. Yes.

Q. And then the idea of the plan was not to try to stray from that norm, and you come up with a plan that would permit you to do that?

A. That's right.

Q. And that was the prime consideration that resulted in the assimilation of the clusters you have here?

A. That, plus the travel time, yes.

Q. Plus the travel time. Those were the two big factors.

Now, Dr. Foster, you previously testified in this case on March 16th, 1972, is that right?

[1242] Was that the last time you testified?

A. I don't have the dates with me.

Q. Well, would you agree with on or about March 16th?

A. Yes.

Q. We are not going to hold you to the exact date.

A. Yes.

Q. Would that be about right?

A. Yes.

Q. And at that time you testified in support of a different type of a plan? I am not going to ask you any questions about it.

A. A plan for the City of Detroit.

Q. Right, that's right.

Now, the testimony you gave at that time was, I take, based upon your opinion as an expert and a professional in the field of education.

A. Yes.

Q. All right. Now, I take it that nothing you have said today is intended by you to contravene or change any of the testimony you offered before; that today's testimony is on a different subject.

A. Well, not completely different; it's an allied subject.

Q. Do you wish to recant any of the professional testimony you gave on March 16th?

[1243] A. Not offhand, no, sir.

Q. All right. So then you would still stand by the opinions you proffered on March 16th and the professional statements you made at that time.

A. I would assume so, yes.

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Q. All right. So we really don't have any pilot plan that [1244] would embrace some 40 or 50 or possibly 80 school districts, that you know of?

A. I don't think I could quite say that. I think when you reach a certain size in school districts – for example, there are many similarities between a plan which would encompass, say, a district of let's say a hundred thousand or 150,000, or in Detroit, 280,000, and one of the magnitude we are currently dealing with. There are many similarities. Obviously, nothing has reached the size we are now contemplating, but there are many similarities.

Q. There are similarities but there are also differences, is that not true, based on the number of districts involved and the geographical territory?

A. Yes.

Q. And area of the school?

A. Yes.

Q. Have you ever worked out, before, Dr. Foster, in your professional capacity, any kind of an inter-district plan where there was a desegregation plan that involved two previously separate school districts?

A. Well, I have worked on many reorganization plans but none involving desegregation as a major factor; I have worked on some plans in Pennsylvania in the last five [1245] years in which desegegration was one factor but not the major factor.

Q. Were those plans that involved a multitude of school districts?

A. In some cases they involved districts joining or being what we call school district reorganization, where several districts would join into one new district, this sort of thing.

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[1268] Q. You think that makes a difference.

And if you were working on a desegregation plan, would that be one of the factors you would want to look at before you made your ultimate determination as to where pupils were to wind up?

A. Well, I think the three plans I reviewed – I did not go into finance at all in considering our proposal, plaintiff's proposal.

As I remember, the three plans that I have reviewed did go into this, not in complete detail but in some general suggestions.

For example, some of them, I believe, suggested that the millage rate for the total metropolitan area that is affected by a plan should approach the highest millage rate of any of the systems, I believe is the way I read it.

I think another possibility, as an interim measure for finance, might be something like a charge of so much per student, so much per head. I think there are various combinations of things.

Q. Would it be a voucher-type system or -

A. (Interposing): No, not exactly. No. But the sort of system you have when you send a pupil across district lines to another city or something and you pay his [1269] tuition.

Q. Well, you treat him the same way you would as a tuition pupil, in other words?

A. Yes.

Q. Something similar to that?

A. I did not go into the financial aspects but I certainly think they are important, and some form of equalization would have to be considered, yes, sir.

Q. Do you think it would be necessary to work those out before you could actually implement a plan?

A. I think this would be not so much a problem of the plan maker, as of the governing boards of the area that was set up. Whenever the final decision was about what the nature of the governing board would be, this would be, I think, one of their tasks.

Q. Regardless of who does it, do you think it should or would have to be done before a plan could be deductively implemented?

A. Well, I think there are interim measures that could be developed fairly easily. I think in the long haul it would be more intricate and would definitely be involved in current litigation that's going on in the country now. And I refer, of course, to the Serrano type financial litigation that is with us everywhere, and which certainly [1270] would be a factor.

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[1276] Q. All right. And so in connection, the answer would be true, then, if I asked you whether a substantial number of white population in Cluster 1 left, the plan doesn't address itself to that?

A. Right.

Q. Let me ask you, Dr. Foster; is this 25 or roughly 25 percent norm been involved in any other desegregation plans that you personally served and were involved with, give or take 5 percent, somewhere around there?

A. Well, I'm sure it has, some. I would have to go back through the list to tell you which ones.

But in the State of Florida, for example, in which I have been involved in quite a few plans, this is a rather common figure, 25 percent.

Q. All right. Now, after you have participated in one of these desegregation plans where you had a norm somewhere near that, have you ever gone back and looked at it, the situation, in your professional capacity, let's say, a year later?

A. I have on occasion, yes.

Q. All right. What has been your experience? Have you found that where you have, let's say, a 75-25 percent mix, that that engenders white flight?

A. Well, white flight is a complicated phenomenon, as we [1277] have agreed, I think. And I also testified that it is due to a lot of factors besides desegregation.

I understand that in Atlanta, for example, there was quite a bit of white flight from the city before any schools were integrated. And this is true of several cities.

One system I can think of as an example in Florida; namely, the Tampa-Hillsborough County School System of about a hundred thousand children, I believe, has experienced, as far as I know, with a complete desegregation plan this year, absolutely no white flight. There is no place to go. It's a metropolitan district and it is a large sized system, and really, the only place that whites or blacks could flee desegregation would be Pinellas County, which is in St. Petersburg, and they find the same thing there.

Q. All right. May I go back to my question, and then you can answer it yes or no. That was a rather long narrative but did not answer my question.

My question again, Doctor, was that; have you gone back as a professional after the implementation of a desegregation plan and made a determination as to whether or not, based on a 75-25 percent mix, roughly, that white flight had been engendered?

[1278] MR. LUCAS: He just answered it, he said Tampa, your Honor.

A. I have been in Tampa within the past week, sir, and talking with school officials. And I think their desegregation situation is well put down in the Civil Rights Commission Report,

which has just been made available, on five cities desegregated. And what I stated will largely be borne out by that information.

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[1286] . . .

Q. So quality of education was not a criteria for your plans, is that right?

A. That is correct. I think it would be rather difficult to determine what level of quality of education you would find in any given district in any event.

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[1287] . . .

Q. My question though is why Oak Park was transferred?

A. I am looking at the data, Cluster 7 and Cluster 8, I could surmise that Cluster 7 is rather far spread. I think it is our top cluster in percentage black in 30.8. Adding Oak Park to the cluster would presumably increase the spread. If there were any particular reason why Oak Park was put in Cluster 8 rather than Cluster 7 I guess that is why I did it.

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[1289] . . .

Q. Sir, do you make any claim for your particular plan that there is a maximum of 40 minutes' travel limitation for a studen t to travel?

A. I did not personally go out and check the travel times, and all the data that I have, includes the Board's data in one of their exhibits, I think it's 16, and the TALUS data, which is illustrated on the overlay on the main map. And I relied on these data.

Q. And what is your claim relative to minimum of travel time, if any?

A. That the lengthiest travel times in the Plaintiff's plan would generally not exceed 40 minutes.

[1290] Q. And do you so represent to the Court as the author of this plan?

A. Well, along with the statement I just made that I didn't check it out personally. To the best of my knowledge, based on the data I had available, let's put it that way.

Q. Well, you used others' data then; is that correct?

A. I just stated so, yes.

Q. So I take it that you are personally not able to assure the Court that under your plan there would be this 40-minute limitation; that you must rely on what others have presented. Is that right?

A. Yes.

Q. Now, sir, I note, for example on Exhibit 16 which you referred to – this is the Detroit analysis of time – where they list the 35 minutes, for example, between Central High and Southfield High School. That's on Page 3 or Example Number 3.

A. Yes.

Q. Did you rely on that in making your estimate of time?

A. I relied on all of Exhibit 16, yes.

Q. And I take it then, that if Exhibit 16 is not reliable, then perhaps you would want to look further into the matter of transportation before making a positive statement to the Court?

A. Conceivably, yes.

Q. You mentioned the other day about expressway driving and I think you said some places the speed limits are 65. Is that right?

A. They vary from city to city, yes, sir.

Q. Well, did you contemplate, for example, that under some circumstances the buses would go 65 miles per hour, if that were the limit?

A. If I have checked, I don't remember what the state bus law is for maximum speed in Michigan. I think this varies from state to state.

Q. Well, you don't know what it is in Michigan.

A. No, I do not.

Q. All right. Well, let's assume for a minute that it is 50 miles per hour. You are not advocating that that be exceeded?

A. Well, no.

Q. And if they use 50 –

A. (Interposing) Unless it was deemed wise by the local boards involved to ask for a change in that or some special permission.

Q. All right. I assume you would follow the law if it were 50.

A. Yes.

[1292] Q. Now, I note that some of the time limits on the Detroit study show 55 miles per hour; the example I showed you. If that was over the limit then, this would have to be revised, would it not?

A. Presumably, yes.

Q. Now, your testimony yesterday, I think, was that your exhibit – this is Plaintiff's Exhibit – was more of a proposal; is that correct?

A. I think I said, yes, that it was not a final plan.

Q. And I take it that before a proposal becomes a final plan that you would want further studies made; is that right?

A. Certainly, yes.

Q. In other words, we have the proposal which has to ripen into a plan; is that a fair terminology?

A. Well, I think all of the proposals before the Court are of that nature.

Q. Well, I am just asking you about yours.

A. They're skeletal, yes.

Q. I take it, then, you would have to have more study before it would ripen into a plan; is that correct?

A. Well, I am not certain you would need more studies; you would need to get people together who knew something about the situation and had data available and who could move the proposal into a plan.

[1293] Q. Well, your suppose –

A. (Interposing) If you are talking about medium range or long range studies –

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Q. (Interposing) Well, one of the things you would have to look into would be transportation?

A. Certainly, yes.

Q. You haven't looked into this, have you?

A. No.

Q. And I think you also indicated that you would have to work out a detailed plan of pupil assignments?

A. That's correct.

Q. And you would also have to look into logistics, such as school capacity, furniture, things of this nature?

A. That's correct.

Q. And I think you also wanted to look into the cluster movement of students. You hadn't looked into any movement of students within a cluster, had you?

A. No. That would be part of the pupil assignment plan, if I understand you correctly.

Q. But it is a fair statement that you haven't looked into that detail as yet?

A. That's correct.

Q. Now, how would you propose to pay for this plan?

A. For the making of the plan?

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[1295] . . .

Q. And when did you do that, sir?

A. Sometime between Monday noon and 4:30 Tuesday morning.

Q. 4:30 Tuesday morning?

A. That's correct, sir.

Q. I take it you stayed up all night to put the plan together?

A. Well, not quite all night, no.

Q. Well, half the night?

A. A good part of it, yes, sir.

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[1297] . . .

REDIRECT EXAMINATION BY MR. LUCAS:

Q. Dr. Foster, Mr. Saxton made mention of the fact that no one has ever done a plan for a district, desegregation plan for pupils, in the size and the number of pupils involved here.

Would you take a look at Plaintiff's Exhibit 12, and the clusters. Directing your attention, Dr. Foster, to one of the criteria, one of the purposes of clustering which was testified to by Dr. Rankin was the fact of the manageability.

In preparing a desegregation plan for [1298] Cluster 1, are you in fact preparing a desegregation plan – when I say a plan I mean a pupil assignment plan – for a total of 53,000 students?

A. Well, I think that is quite clear, yes, sir.

Q. Have there been plans done in a relatively brief period of time in school systems for groups of students that size?

A. Yes. That is to say, you are dealing cluster by cluster and not with a 700,000 odd children plan, but you are doing it cluster by cluster, yes.

Q. Do you understand, either the Board of Education proposal, CCBE proposal or the Plaintiff's proposal to involve assignment between clusters, or only among the schools clustered?

A. As I recollect them, they were all within either regions or clusters or zones, and would have the same general situation.

Q. Would it be fair to say, Dr. Foster, that if a team sat down to draw up a desegregation plan for Cluster 1, it would simply be involved with the number of pupils and the number of buildings in that particular cluster?

A. I would believe so, yes.

Q. Doctor, on the question about school capacity did you assume, in preparing your clusters, that the children [1299] that were shown attending schools in those areas had buildings to go to school in?

A. I would presume so, yes.

Q. So you assumed there was a capacity for those children in those areas?

A. Yes.

Q. Your answer with regard to desegregation plans, I think the largest cluster we have is 99,000, roughly. Cluster – I'm sorry, 93,000 in Cluster 4.

A. I think it's 93,477 in Cluster 4, yes.

Q. And have there been desegregation plans drawn for school districts of that size?

A. I just finished one for Memphis which is 145,000. I have worked on plans, portions of plans in Houston and Dade County, both of which are around 240,000 pupils. There are several systems around the 100,000 area, which plans have been developed.

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[1301] . . .

Q. I notice the contradiction in the cross examination of various counsel, Dr. Foster. On the one hand Mr. Beer asked you if you were aware that school districts in the suburbs, in anticipation of growth in their area, had built substantial excess capacity which was just waiting for people to move into, and on the other hand Mr. Saxton's question was to the effect that did you know whether or not any of the districts were in double sessions and were expecting growth, influx of pupils in excess of what they were able to handle. And I've forgotten which particular districts it was he asked you about.

Do you know whether or not school districts customarily have a great deal of capacity built in advance, ready for use before the students are actually there are hand, or do school districts generally play catch up?

A. Except for building specifically for something like a housing project that's going up, and then it wouldn't be dated very far ahead. Quite often that's a catch up [1301 a] proposition. Also, most school districts do not have the financial means to build well ahead of occupancy, I would say.

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[1323] . . .

STUART RANKIN,

was recalled as a witness herein, and having been previously duly sworn, testified further as follows:

CROSS EXAMINATION BY MR. LUCAS:

Q. Dr. Rankin, have you had an opportunity to re-read your testimony before taking the stand today?

A. No, sir. I have had an opportunity to, I guess, but I haven't read it.

Q. But you haven't done it. It has been several days since you testified.

A. Yes, sir.

Q. You may not remember and I may be wrong, but my notes reflect certain lawyers asked you certain questions on cross examination. My recollection, my notes, indicate that you were asked about your racial balance plan, your racial mixing plan. I think the phrase "racial balance" was used something like eight to ten times by Mr. Saxton. And I think perhaps you made this clear but I want to be absolutely sure.

Do I understand, Dr. Rankin, that the Detroit Board's proposal does not, just as no Court has ever ordered racial balance, despite political treaties [1324] that they have – your plan does not purport to be a racial balanced plan, is that correct?

MR. ROUMELL: Well, I am going to ask that Mr. Lucas, although charming I think the argument should be out of his question.

THE COURT: He may answer it.

A. Does racial balance mean an exact proportion in every situation?

Q. (By Mr. Lucas) Well, I am not sure what is meant when it is said in that context. But does it actually establish a racial balance in the sense that every school has the same balance in it?

A. It does not.

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[1378] . . .

MR. SAXTON: I want to go into an area Mr. Lucas brought out today and it is necessary to go into that background to tie into

a question he asked. I know the Court's finding and conclusions issued on September 27th indicate that in 1950 the racial population in terms of black was 16.2 per cent in Detroit. I didn't find in the findings and conclusions the pupil constituency within a period of time that encompasses Dr. Rankin's employment, that is the reason I asked the question.

THE COURT: Proceed. Be mindful this is recross examination.

MR. SAXTON: Yes, I am and I am going into an area that was opened up by Mr. Lucas.

A. I don't know but I presume it was less than half black in 1955.

Q. Now, do you know whether or not since 1955 there has been any change in the Detroit school boundaries, the perimeters of the Detroit school boundaries, the perimeters of the Detroit school system, the outlying perimeters?

A. I don't think there has been any.

[1379] Q. Do you know which, if any, of the metropolitan school districts referred to in your cluster plan, Exhibits M 11 and M 14 were created or established after 1955?

A. No, I do not.

Q. Do you know as a matter of fact that any of them were established after 1955?

A. I know that there was some redistricting in the southwestern portion of the three county area but I don't know what the nature of it was.

Q. Other than the disappearance of the former Nankin Mills School District which was partially absorbed by Livonia and partially by Wayne and Westland, do you know of any other change in the school districts in metropolitan Detroit?

A. I believe in addition to Nankin Mills there may have been some consolidation further south and west but I am not certain of that. I wouldn't want to say that I know for sure there hasn't been.

Q. All right.

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[1389] . . .

Q. I will restate it again. Dr. Coleman stated, I will quote from his remarks in the Educational Researcher:

"There is not sufficient evidence to show the kind of benefits to lower socio-economic class children that come from a socio-economically heterogeneous or racially heterogeneous school can not also be provided by other means."

MR. LUCAS: I think we are getting at the "instead of" "separate but equal" argument again and I object.

THE COURT: I think that is true but I will take his answer. Mr. Saxton assured me this is his last question.

A. Mr. Saxton, I think it is an important question too. My response is that I don't believe from what I have seen or heard from what Mr. Coleman had said either there or on other occasions recently that he is backing away from the position which has been reported in a number of studies, the [1390] best one of which is one done by Alan Wilson in California. I think it is surely possible for people to over-interpret the findings of a study but as I read and study the research and from my conversations with Mr. Coleman and others I am forced to the conclusion that we need to use at least four mechanisms to improve the quality of education, especially for the poor, and that one of those is desegregation, the second one is mixing socio-economic status and a third one is we have to provide additional monies even if they must follow the child in a metropolitan desegregation plan for those who are disadvantaged and the fourth one is that the people who are responsible for carrying out the education of the youngsters, the teachers, the pupils and parents in those communities where those students are attending school ought to be fully involved in decisions regarding that education and ought to achieve what I would call responsible autonomy.

If it were possible to bring these four factors in together in a situation for once, I believe it is possible to happen and I believe that is where it is.

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[1399] . . .

MR. ROUMELL: Your Honor, at this particular time I move for the admission of Exhibit 19.

MR. LUCAS: We object to the admission, Your Honor, as it is irrelevant. I don't think the Fourteenth Amendment has been read to speak to SES While we have no particular quarrel with SES considerations, to the extent that they don't interfere with the desegregation process, I don't think they are relevant to the Fourteenth Amendment right. If the districts were all poor or all rich the Fourteenth Amendment desegregation requirements would be precisely the same. I believe the exhibit is irrelevant.

MR. ROUMELL: Well, two points, your Honor:

Number one, I think Dr. Gordon Foster, who prepared the Plaintiff plan stated that he did try to consider it. Number one, their own witness did.

And Number two, perhaps Mr. Lucas and [1400] I have a different interpretation of the Swan case. We think there should be – and I have heard Dr. Foster use the word – quality desegregation. I think that's what we are all about here. I think we are talking about equality opportunity, equality education.

MR. LUCAS: One point of correction. Dr. Foster said he looked at it after he had done the desegregation; he looked at it to see what relationship it might have to what the Detroit Board may have done. He did not satisfy this component in making up the desegregation.

MR. ROUMELL: I am sure that Dr. Foster, as an educator, was concerned about it and that's why he looked at it.

THE COURT: Well, the exhibit may be received. We have had considerable testimony on the impact of SES.

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COLLOQUY – OFFER OF PROOF

[1467] THE COURT: I think, then we come down to the offer of proof by the new intervenors.

MR. SAXTON: Yes.

Your Honor, we would propose not too much by way of evidentiary testimony. We think a great deal of what we have to offer can be introduced in summary form in the form of exhibits to be submitted to counsel ahead of time for their concurrence. And some of those are in the process of being assimilated now.

I think, as the Court may appreciate, with our being here, with having to contact some 40 school districts, that there has been a period when many of them were not available. It's been somewhat difficult.

Basically, in our offer of proof we would like to first of all tender a witness who would be Dr. David Armor, who is a social scientist at Harvard University and has had considerable –

[1468] THE COURT: What was that name again?

MR. SAXTON: Dr. Armor, A-r-m-o-r.

THE COURT: Yes, I know how to spell it.

MR. SAXTON: Who is a social scientist at Harvard University, who has had considerable involvement in making studies of effects of school desegregation plans and is a noted authority in the field of education.

We would offer or we would propose to submit Dr. Armor as a witness, first of all to comment upon the various plans that have been tendered before this Court from the standpoint of educational soundness and their contribution or lack of contribution to the goal of the quality of education. Now, also in that connection Dr. Armor has just recently – as I believe is indicated in Mr. Condit's memorandum already submitted - Dr. Armor has just recently concluded a study based upon, I believe it was five school districts that have experienced experienced what he refers to as induced desegregation enforced through the busing mechanism, and the results as he finds them as a social scientist, and the effects of that desegregation. In simple statement and conclusionary form, his testimony in that regard would show that his studies and research reveals that, number one, there has been no significant achievement [1469] for black minority people as a result of that and, number two, that there has been some social setbacks as a result of desegregation enforced through busing orders.

That would be, in short and in summary form, the gist of the testimony we would propose to submit through Dr. Armor.

We would not propose to submit through him testimony critical of the racial composition of the various plans, whether it should be 70-30, 75-25 or so on.

That would be our primary witness.

We would further propose to submit to this Court – and we think this could be done, your Honor, in the form of either affidavits or some kind of summary statement – we would propose to submit to the Court evidence as to when each of the metropolitan districts in the tri-county area were created and established. We think that is relevant and significant for two reasons:

One, is the Court's statement in connection with its ruling, that it would not adopt an intra-Detroit plan, wherein the Court noted that if the present school districts or boundaries were to be [1470] drawn today the Court did not think that they could withstand constitutional scrutiny. That, coupled with the fact that in the case of Spencer v. Kugler, which was affirmed by the Supreme Court in January of this year, the three-judge panel in Federal District Court noted in that case that it was a matter of some relevance that all of the school districts there involved were established long before the racial patterns had changed that resulted in the predominance of black citizens in a certain community. We think, in view of this Court's statement and in view of the finding in that case, that information would be relevant.

We also propose, your Honor, to submit – and again we think this could be by way of written proof in the form of affidavits or exhibits – information as to the classroom capacity presently existing in the various metropolitan districts and the number of students occupying that classroom capacity. We think that is not relevant from the standpoint of our legal argument, but from the standpoint of making sure that the Court does have all of the facts in front of it before it makes whatever ruling it intends to make.

Lastly, your Honor, is the matter of the subpoena which we have already issued to the Detroit [1471] School Board wherein we requested them to furnish their records as to instance of

attacks, violence and things of that type that have occurred in various schools in the Detroit School District. Let me make it clear, your Honor, we have not asked that there be any racial identification connected with that, we have not asked that there be any individual name identification connected with that. We submit that it is relevant because we think one factor to be considered by this Court, and indeed any possible reviewing court, is the potential effect on safety, particularly of younger children, by moving them from the places where they are now situant in terms of attending school, to the metropolitan area. We think this testimony would be brief, based upon those records. We do think it is relevant and a matter that this Court should take into account and, as I said, that an appellate court may want to take into account.

That, your Honor, in sum and substance would be the nature of our proof.

We are not prepared to go forward with it today, nor would we be prepared to go forward with it tomorrow.

THE COURT: Mr. Condit?

[1472] MR. CONDIT: If the Court please, I believe I can join in the comments made by Mr. Saxton, and perhaps add a fifth possibility. And this would be in the area of some transportation information hopefully in the area of schedules or affidavits to submit to the Court. We have previously filed our offer of proof insofar as it applies to the testimony of Dr. Armor. And I think I would withhold any further comments, except I would like the opportunity to rebut any argument relative to our offer of proof.

THE COURT: Mr. West?

MR. WEST: If the Court please, we have of course discussed the question of the offers of proof with Mr. Saxton and Mr. Condit, and we would concur in their offer.

THE COURT: Mr. Flannery?

MR. FLANNERY: May it please the Court, with respect to the substance of the offer of proof made by Mr. Saxton and concurred in by the other gentlemen, I think that we would have no problem stipulating to the authenticity of the dates of or origin, incorporation of school districts in the metropolitan area, and I believe that we would have no difficulty stipulating, subject

to our right to [1473] correct thereafter in the event of error, stipulating to capacity data.

With respect to Mr. Saxton's inability to come forward with proof at this point, we would object most strongly, your Honor. The thrust of this Court's order permitting intervention was that that intervention should not be contended or result in prejudice to the prior parties by delay or otherwise.

It seems to us that it is not excusable for the intervenors to be unable to come forward in support of their offers of proof.

Lastly, your Honor, if I understood Mr. Saxton correctly, Dr. Armor would not address himself to the efficacy, practicability, soundness of the details of the plans pending before this Court, and yet it is that and only that, as I understand the Court's prior orders, which is the subject matter of this hearing. Dr. Armor apparently would address himself to the educational desirability of induced – if I understood the phrase correctly – induced desegregation.

May it please the Court, on behalf of plaintiffs, we don't accept for a second one iota of the representation made on behalf of Dr. Armor by Mr. Saxton. The substance, we believe, would be [1474] demonstrably false. But our position to the Court, your Honor, is that the Fourteenth Amendment and Title 4 of the Civil Rights Act of 1964 and 43 U.S.C. 1983, the statutes by virtue of which we are before the Court and have been since August of 1970, are not statutes that authorize this Court to sit in judgment of sound educational quality as perceived by Dr. Armor of Mr. Saxton or their other proffered witnesses. The remedy for illegal racial school segregation, is school desegregation. The amount and nature of school desegregation does not turn on non-legal educational considerations concerning the racial mixtures that Dr. Armor or others of his associates may find suitable for themselves. It is a legal requirement, your Honor, which Mr. Lucas, if I read the transcript correctly, has repeatedly asserted and been sustained with respect to in this court.

Lastly, your Honor, we think that the offer of proof with respect to the incidents of violence in Detroit is not worthy of judicial cognizance. If I understood Mr. Saxton correctly, the incidents of violence in Detroit make such schools adequate, suitable for children in Detroit and not elsewhere.

The point, your Honor, is that this [1475] Court has previously found that the illegal segregation within and of Detroit requires Fourteenth Amendment remedies and we think that is the end of the inquiry.

For those reasons, your Honor, as indicated, we object to Mr. Saxton's offer of proof, and we would ask that with respect to capacity data and the dates of incorporation or origin of suburban districts, that he come forward and come forward now with such data or forego the opportunity.

Thank you.

MR. SAXTON: May we respond, your Honor?

THE COURT: Yes.

MR. SAXTON: We have had a great deal of expert testimony in this case, your Honor, and it seems what Mr. Flannery is saying is that this Court should only hear the expert testimony offered by the Plaintiff. We are not sure that that really informs the Court or that it's accurate. I think it is convenient for the Plaintiffs if one only hears their side of the case.

We are disturbed, both as counsel and on behalf of the school districts we represent, that the Plaintiffs would take the position that quality of education is insignificant. We do not think the [1476] decisions of the higher courts have completely thrown that out. We think that is to be balanced, along with any desegregation order.

I would again, as I have noted several times – perhaps I am wrong and perhaps the Court has changed its mind since October 4th, although it has not indicated on this record – but on October 4th there were two significant things, I think, stated by this Court which we think are significant. And evidently the Court thought so, at least at that time.

One of them, as the Court said and I quote, on October 4th:

"With respect to matters of speed in having a plan or having plans and proceeding on them, I think you should know something about my manner of working. In a case, particularly like this, I feel my way to a decision, and I certainly don't propose to jump to judgment."

Now, perhaps, as I said, we are in error. We have taken that statement literally, your Honor, that the Court does consider this case of such magnitude and import that indeed it does not intend to jump to judgment and indeed it does intend to feel its way to [1477] a decision, and it does not intend to feel its way to a decision solely on the plans submitted only by Plaintiffs, and therefore we feel that other testimony should be offered so that the Court may see all sides of the situation and then weigh them all in making this judgment.

Another thing the Court noted on October 4th, when it ordered these various plans submitted – and I quote – the Court said:

> "I would remind counsel, as I keep reminding myself in this case, that our objective is quality education for all of our children."

If that is a concern, your Honor, then we think that testimony going to the point of what is quality education, from people qualified to give it, and whether or not the proffered plan will result in that factor, are significant and are relevant. If this Court or any court is no longer interested in quality education, we would concede that our proffer of proof would not be relevant to the issue. If quality education is not important, then our proof, likewise would not be relevant.

Now, I have not counseled with [1478] Mr. Flannery, and I do take some umbrage with his apparent attempt to read my mind. And I would submit he is a very poor reader.

I have neither said nor implied that we think children in Detroit should go to unsafe schools but children in the suburbs should not. We don't think anybody should go to an unsafe school, whether they live in Detroit or whether they live anywhere else. And perhaps this is a factor the Court should take into account in his order, if we are going to have an order from this Court. Perhaps the Court should make some remedial orders as to things that should be taken into account and various decisions that might be used and procedures that would be followed to make the procedures more satisfactory. I don't think burying one's head in the sand and saying it exists but we don't want to talk about it is assisting the Court, nor does it assist the community or follow the precepts of law as decided by higher courts.

We do not, your Honor, seek to delay this case for the purposes of delay; we are concerned about quality education, about impact on the community, and about following the law.

We don't think, your Honor, since we [1479] are going to have a three-week hiatus anyway, that another short period of time to give the intervenors a reasonably opportunity – after having heard the testimony of the Plaintiffs and the other Defendants – to prepare, is an undue burden on anybody. After all, Mr. Flannery just announced five minutes ago that the Plaintiffs rested. We did not know what type of evidence they were going to introduce prior to the time they did submit it and rest, and we did not have an opportunity to respond to it in the manner we would like. Obviously, we will abide in any order set by this Court, but we submit that the matter we have offered to submit by the way of proof is relevant and should be considered by this Court. And we leave in the Court's judgment.

THE COURT: Mr. Condit?

MR. CONDIT: If the Court please, Mr. Flannery suggests that the subject matter of quality education – and I think I've quoted him directly – is a non-legal consideration. And I think that Mr. Flannery omits consideration of the very subject matter of this litigation.

It involves schools. The very purpose of schools is to impart education to the children who attend the schools. So I don't think that we can separate [1480] the quality of our educational program and say, "Well, the quality of education is just an aside; what we are interested in here is moving white faces and black faces and other minority faces around to the tri-county area."

I don't think that we can indulge in this type of consideration. The very purpose of schools is to educate. And if we can't educate under this plan, then it's going to be worthless.

Now, in our offer of proof we suggested that what we are embarking upon here, apparently, is a very noble type of experiment. I don't question the well-intentioned testimony of any of the witnesses that we have heard; I think that they are convinced that this is the best way to approach it. And certainly they come into this court well-intentioned. But if we consider what has happened throughout the country and if we consider the

proposal before the Court, we have, as I see it, a very massive type of experiment. It may well be nice to try it if there was not so much at stake. Because as we see it from our viewpoint, for what they are proposing, is the dismantling of the school district as we know it in the tri-county area. And it so happens that this school system thus [1481] far has fulfilled its responsibility to impart a quality type of education to children. And I might say, without regard to race, color or creed or national origin. So I don't suggest that we should embark upon a course such as this, which results in the desegregation of our schools, unless we know what we are talking about.

Now, the Court has, as I understand it – we have only been in this lawsuit about three or four weeks – but the Court, I believe, has only seen one side of the educational coin. And I think our system of justice is based upon the adversary process whereby the plaintiffs put in their testimony and the defendants put in their testimony. Thus far the Court has only seen one part of the coin. What we are suggesting is that there is another side of the coin and that this side of the coin distinguishes the testimony that has been presented by these witnesses, impeaches these witnesses and will give the Court, I think, the practical ramifications of this type of plan.

It is a new study, it is the most current thing that we have available, and I don't see that the Court should not consider it strongly.

Now, as to the matter of timing, in my offer of proof we indicated that Dr. Armor's [1482] report, which does concern longitudinal studies of at least five school districts throughout the country, will not be available until the early part of May. I suggest that if the Court were advised there was to be a landmark legal decision forthcoming out of the Court of Appeals or the Supreme Court in the next three or four weeks, I thing the Court would defer and wait to see what the courts had to say. In this respect, what we are suggesting is that we have the first study of any significance in perhaps the last six to seven years to present to the Court and that this is a landmark educational study and that the Court should take it into consideration. And I don't think a delay, particularly if we are talking about three weeks off, would be prejudicial to anyone.

So what we would like to do is show the other side of the coin, show you that there are two sides to the story.

We are impressed with the fact that up to the point of the school districts coming into this lawsuit, that no one has been able to speak for the school districts and the type of educational system that we have; other than perhaps Mr. Krasicky, who I think has done the best job under the circumstances, [1482-A] with the responsibility that he has to his State Defendants.

So that this has not, up to our point of entry, been an adversary proceeding in this lawsuit. You have not seen the school district side of the coin and we would like an opportunity to present it to you.

[1483] THE COURT: Other parties wish to be heard on the offer of proof?

MR. KRASICKY: Just briefly. In listening to Mr. Saxton he has offered to the Court that Dr. Armor will comment on the various plans. I think this is relevant and relative to the safety in thy Detroit schools we don't know what the proofs will show but I think it is relevant also. I think these requests are reasonable and should be granted.

THE COURT: Mr. Roumell?

MR. ROUMELL: I thought you might want to hear from the man in the middle.

Your Honor, we take the position, we think the Detroit Board of Education has advocated a position here, we hope with some vigor, and we have a responsibility of presenting a plan which we think we have. If people are telling us we don't have anything more to do today we are prepared with rebuttal witnesses right now and we have always been.

We would like to hear from the other people if they have something to present. We have a motion before the Court right now on their subpoena because, of course, we take the position that we do have safe schools.

[1484] Furthermore, we again emphasize to the Court that we were a little bit amazed by counsel talking about quality education. We are interested in equal and quality education. We advocate that.

We also have worked nights and days and we have contacted various experts and are aware of peoples availability. We will do what the Court asks us. If they wish us to put on rebuttal witnesses we will.

We have no objection to anybody having their full day in court. We will listen to them will keen ears and try to ask the best questions we have but we will say we will again renew our motion to stike the subpoena.

We may say this too if Mr. Saxton wants to open the door on some of these items we will be there to ask some questions about their districts and any problems we may have in those areas. We also say, your Honor, that as far as when these other districts were organized, I really don't think it is relevant, but if it is relevant we want to cross examine on it. We have no objection to them putting in proofs and when the Court tells us to be here we will be here, if it's today it's today, and if [1485] it's tomorrow it's tomorrow.

We again emphasize that our aim is equal and quality education.

THE COURT: Mr. Sachs, do you wish to make any comments?

MR. SACHS: They would not be germane to the pending matters, your Honor.

THE COURT: The Court recognizes it is the position of the new intervenors that since the Court has made no factual or evidentiary finding that individual school districts in the metropolitan area surrounding the City of Detroit have been guilty of acts of segregation and it has no legal power to include them in any plan of desegregation and they go further than that, I take it it is their position that not only does the Court lack the power to go beyond the confines of the City of Detroit in ordering desegregation but that it would be educationally unsound and unwise to do so.

We concede that the Supreme Court of the United States has not as yet had occasion to deal with a situation precisely such as ours. That fact, however, does not relieve this Court of the duty of resolving the problem presented.

[1486] Our decision to proceed with the metropolitan remedy arises from the evidence in this case and from what the Supreme

Court has said and done in school desegregation cases that it has considered.

What we have said is not to be taken to mean that our view of the law is infallible. We do not claim to have perfect legal vision. If we have erred in our view of the law those who are opposed to our exposition of it already, through their pleadings, have the benefit of it.

Our appellate procedures are designed to deliver litigants from the evil of trial court error whenever it occurs. Parenthetically we might note that in looking to a metropolitan solution for our school problems we are doing nothing new and nothing more than the people in the greater Detroit area have done for years and are doing now.

Local units of government in the metropolitan area have not hesitated to joint together for the purpose of providing better solutions to problems confronting them. In such instances various units of government have either disregarded local boundaries or have concluded that the problems were such as to call for a metropolitan solution. In some cases [1487] they have created overlay organizations.

An example of such is SEMCOG and recreational authorities come to mind. Only recently the press carried reports of a tri-county sewage system whose current expansion is being concentrated in the counties of Wayne, Oakland and Macomb. It is expected that it will eventually be expanded to part of Monroe, Washtenaw and St. Clair Counties. It is reported that when completed the project will serve 72 communities and more than 3 million people.

The Detroit Water System, for example, is a metropolitan system providing service to municipalities beyond the City of Flint.

In the field of health the Emergency Care Commission of the Greater Detroit Area Hospital Council has lately presented a plan calling for 32 area hospitals to provide service in emergencies in the metropolitan area.

These steps for meeting metropolitan problems by calling upon metropolitan resources in instances mentioned where it does not appear that the protection of basic constitutional rights

required such action only serve to fortify our conclusion that where we are concerned with the basic constitutional [1488] right to equal educational opportunity and we find that it is not and cannot be provided on a local basis we must look to a metropolitan solution.

Education is our greatest industry in this nation. Is there any reason why it should not be dealt with on a full community or metropolitan basis. Allusion has been made to comments I have made on previous occasions in this case. I do not consider my rulings or my present course as inconsistent with my prior rulings or statements.

With respect to the matter of time and at what pace or what leisure we should proceed the Court of Appeals in Cincinnati has not, to put it mildly, suggested a pause in these proceedings. I think part of the difficulty of the legal problems presented in connection with the inclusion of suburban areas in a plan of desegregation while not directly considered were disposed of some months before I was born by the Supreme Court of the United States.

Let me quote, this is from Hunter v. City of Pittsburgh, 207 U.S., at pages 178 and 179.

> "We think the following principles have been established by them and have become settled doctrines of this court, to be acted [1489] upon wherever they are applicable. Municipal corporat-ons are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such

powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract [1490] the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

As I indicated earlier in this set [1491] of hearings what we are about is drafting and implementation of a plan of desegregation in the metropolitan area. Now, more particularly and specifically to the offer of proof I make the following rulings:

With respect to the proffered or offered testimony of David Armor, his deposition may be taken at a place to be agreed upon by the parties, absent which it is to be taken in the City of Detroit.

Upon the Court's perusal of his testimony if it becomes evident that his testimony should be taken orally in court on those aspects of his deposition as may be pertinent to our proceeding the Court will order it done.

The intervenors may present affidavits as they have suggested they would like to do on the history of the various possibly affected suburban school districts, the capacity data they mentioned and the historical and statistical data having to do with transportation.

By doing this the new intervenors will have the benefit of a record in support of their contentions and it will provide a base

for them upon which to ask the Court ot make appropriate findings and conclusions.

[1492] The motion to quash the subpoena is granted and I would like to have your views, gentlemen, on how much time you want in which to prepare proposed findings and conclusions and proposed order of desegregation. Perhaps the Plaintiffs can speak first.

MR. FLANNERY: Thank you, your Honor. Not longer than 15 days after the close of the record and we would like to suggest that if the record does not close tomorrow for the reason that affidavits may be presented thereafter or that Dr. Armor's deposition may be taken some place that a terminal date as brief and as fast as practicable can be set by the Court for the closing of the record.

In behalf of Plaintiffs we would ask for no longer than 15 days after such a date.

THE COURT: Mr. Roumell?

MR. ROUMELL: We have no objection, 15 days is fine.

THE COURT: Mr. Krasicky?

MR. KRASICKY: We would ask for a minimum of 20 days. The Court is under great pressure from the Sixth Circuit, we appreciate this. We have done this at a great speed and we must do this throughtfully and we ask for a minimum of 20 days.

[1493] THE COURT: Mr. Sachs?

MR. SACHS: Fifteen days suggested by Mr. Flannery from the point he indicates would be agreeable. We would also ask leave either for oral argument or for the submission of briefs or memorandum as well.

THE COURT: Mr. Saxton?

MR. SAXTON: We would concur in either of the proposals either made by Mr. Krasicky or Mr. Flannery.

THE COURT: Tell me this on that point, do you think the deposition of David Armor can be taken in a week?

MR. SAXTON: I do not and may I explain why not? We would propose to take the deposition in, I believe it is Cambridge or Boston. The reason it cannot, in having spoken with Dr. Armor,

his study is recently concluded. He is under a commitment with the publisher who is going to publish that that it will not be made public until they put it in manuscript form which will not be for several days. He is under a contractural agreement with them and has been approached by the United States Senate to testify before their committee and cannot do so immediately for the same [1494] reason.

As soon as he is released from that and he indicated to us he thought that would be about the first week in May then he is free to reveal the information. We would not suggest to this Court that you delay anything that you feel is necessary to expedite this proceeding in order for us to take the deposition.

We would request that we be permitted to file the deposition when taken. We would take it at the very first opportunity and we would be happy to submit an affidavit from Dr. Armor as to his availability. He is physically available but he is under a legal and contractual commitment which precludes him revealing the information which we would like to take in the deposition until his publishers have had an opportunity to put it in manuscript form.

THE COURT: So far as the affidavits on the matters we have mentioned is there any reason why you couldn't have those within a week?

MR. SAXTON: I would hope we could have those within a week.

THE COURT: Mr. Condit?

MR. CONDIT: I think we can comply with [1495] the time limits discussed. I did ask Dr. Armor to put a paragraph in his letter relative to timing and this letter has been attached to our order of proof.

There is one other point Mr. Saxton did not mention. Before the survey can actually be published there are certain legal releases that must be received from the people that conducted these five surveys and they just can't be obtained until perhaps the early part of May.

MR. WEST: We would have no difficulty meeting the 15 day proposed period.

THE COURT: Mr. Flannery?

MR. FLANNERY: We would agree to seal the deposition, your Honor, assuming that the information would be made known only to the parties and to the Court and if Dr. Armor wants to keep his secret we would accommodate him in that but we think expediting these proceedings which began in August of 1970 and which the Court of Appeals has mandated us all to proceed with rapidly should not be at the mercy of an understanding between a witness and his publisher when the witness' testimony is itself problematical, certainly in our mind and I think in the Court's mind in light of the Court's comments.

[1496]THE COURT: Anyone else wish to comment? I would expect you will file your affidavits within a week. Insofar as the deposition of David Armor is concerned it may be taken as soon as possible and I am going to consider it eventually as part of the record.

MR. SAXTON: Thank you, your Honor.

[1506] MERLE HENRICKSON,

resumed the stand as a witness on behalf of Defendant Detroit Board and having been previously duly sworn, testified further as follows:

THE COURT: You have been sworn, Mr. Henrickson. You are still under oath.

DIRECT EXAMINATION BY MR. ROUMELL:

Q. Mr. Henrickson, have you had an opportunity to review Plaintiff's proposal for a metropolitan plan?

A. Yes, I have had an opportunity to review their clustering plan.

Q. Could you tell us from a demographer's point of view whether you have any objection to the Plaintiffs' clustering plan?

A. The clustering plan as presented by the Plaintiff is in many respects a modification of the Detroit clustering plan. The modification grows out of the reduction of the perimeter of the area and the changes in the proportions of black and white students which result from unequal removals from the other clusters.

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[1521] . . . MERLE E. HENDRICKSON

Q. Whether the Court adopts the Plaintiff's plan or the Detroit plan, if students are going to be moved in school buses on expressways, interchanges in rush periods, this is going to cause delays regardless of which plan is adopted?

[1522] A. Unless they can be scheduled to avoid the rush periods, yes.

MR. KRASICKY: Thank you.

MR. SAXTON: Your Honor, that provokes one question on my part, if I may ask it from this point. I'm sorry.

What did you consider the rush periods, Mr. Henrickson?

A. I was speaking principally of the morning, thinking principally of the morning rush periods, that period when the traffic coming into Detroit to arrive at 8:00 or 8:30 or at 9:00 backs up along some of the freeways and thoroughfares coming into the city.

The evening rush hour traffic would generally not affect the school transportation, because the school transportation would normally be completed before the evening rush hour traffic.

MR. SAXTON: Did you ever drive on the north bound Lodge Expressway at three o'clock in the afternoon?

A. Yes, I have.

MR. SAXTON: What happens at the Ford interchange and the Davison interchange at three o'clock in the afternoon? Pretty crowded, isn't it?

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[1525] . . .

Q. Mr. Henrickson, you were here when Dr. Rankin testified, were you not?

A. Yes.

Q. I take it, then, in your response to Judge Roth, you believe that Grosse Ile and Trenton should be included, for the same reason as Dr. Rankin?

A. Yes, I do.

Q. And do you take that view on Plymouth, the Plymouth School District?

A. It's important but not as critical as it is for Trenton-Grosse Ile. There is a very critical problem of finding school districts of high SES in the downriver community. This is one of the current problems.

Q. What would you estimate the distance from Southwestern High School to Trenton would be, as you have it?

A. The distance is something like in the range of 10, 12 miles, and it is along a freeway.

MR. ROUMELL: Fine. Thank you very much.

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[1688] RULINGS ON MOTIONS taken under advisement during trial before Honorable Stephen J. Roth, United States District Judge, at Detroit, Michigan on Wednesday, June 14, 1972.

[1693] MR. RITCHIE: With regard to Intervening Defendant Magdowski's motion filed sometime ago to join additional parties defendant the motion is withdrawn and abandoned because the subject of the motion in the opinion of counsel is moot.

THE COURT: Mr. Lord.

MR. LORD: Nothing, your Honor.

THE COURT: Mr. Saxton?

MR. SAXTON: Your Honor, we had requested permission to file material on a transportation survey and at the same time we did that one the State was directed to make the same type of survey. It resulted in quite a deal of confusion with the suburban school districts with two of us funnelling matters at them at the same time. That may be moot.

[1694] I haven't seen the final wrap-up on the State's survey. I would like the Court to hold that open and give us an opportunity to furnish supplemental material in writing. I don't think it would require further hearing before that.

THE COURT: You have called another matter to my attention, have you not, today?

MR. SAXTON: Yes. Pursuant to the direction of this Court on April 13, we did on May 22, take the testimony by deposition of Dr. David Armour at Cambridge, Massachusetts. All counsel of record were notified timely of the taking of the deposition. Counsel for the plaintiffs appeared; counsel for intervening Detroit Federation of Teachers appeared. Mr. Krasicky on behalf of the State defendants. The deposition was completed, has been filed with the Court. We propose when permitted by the Court to offer that deposition.

Mr. Beer for the Detroit Board of Education was also present.

We propose to offer that deposition in evidence at such time as permitted by the Court.

THE COURT: Any comment on the offer of the deposition in evidence?

MR. LUCAS: We oppose it, if this is the appropriate time to make our position clear.

THE COURT: In view of my rulings on matters [1695] having to do with the offer of proof the deposition will be received on a separate record of the intervening defendant.

MR. LUCAS: As an offer of proof?

THE COURT: Yes.

MR. LUCAS: We have no objection as an offer of proof.

THE COURT: That is the manner in which it is received.

MR. CONDIT: If the Court please we would join in Mr. Saxton's motion relative to Dr. Armour's deposition. We have no other matters to bring before the Court.

THE COURT: Mr. West?

MR. WEST: We will follow the same course.

MR. SAXTON: So the record will be clear, do I understand then that the effect of the Court's ruling is that Dr. Armour's deposition is being not – is being deemed not relevant but will be included as part of a separate record in the nature of an offer of proof?

THE COURT: That is correct.

MR. SAXTON: Thank you, your Honor.

[1723] MR. SAXTON: We would like to note for the record an exception to the Court's refusal to receive the deposition in evidence and in the alternative receiving it in the nature of an offer of proof. Not knowing when the transcript and the accompanying exhibit were filed with the Court we do not know whether the Court has had an opportunity to read it yet.

I would like to point out to the Court that [1724] the entire thrust of Dr. Armour's deposition and, indeed, the documentary exhibit offered and received with it is on the effects of busing based upon studies of areas where they have had what Dr. Armour classified as induced or forced integration.

We have had already a great deal of testimony in this case from expert witnesses called on behalf of the plaintiffs and educational experts called on behalf of the Detroit Board as to the supposed effects of a metropolitan plan of desegregation and, indeed, the effects of a so-called Detroit plan of desegregation.

Dr. Armour is, obviously from the statements in the deposition, well qualified as an expert. This testimony is the same ilk and goes to the same general subject matter as that already received it is contrary to the opinion of some experts but that does not take away from its relevance.

We submit it is error not to receive it in evidence and we would object to the limitation that it is received as an offer of proof.

THE COURT: Your position is noted.

[1734] MOTION TO EXPAND PANEL, TEMPORARY INJUNCTION, STAY OF PROCEEDINGS, et al., in the above-entitled cause before Honorable Stephen J. Roth, United States District Judge, at Detroit, Michigan on Thursday, June 29, 1972.

[1737] THE CLERK: Case No. 35257. Bradley, et. al., v William G. Milliken, et al.

THE COURT: I am not sure I know how many matters we have up this morning. I am sure of some but unsure as to others. Perhaps we should begin by taking inventory. I think I am following the chronology of the filing: a motion to expand the developmental panel by Detroit Federation of Teachers. We have a motion for stay of proceedings by the State defendants. We have a

motion for a supplement to the developmental order and a petition for injuction by the Detroit Federation of Teachers.

Mr. Lord, did you file a motion under Rule 54 (b)?

Mr. LORD: No, your Honor. We took the appeal route instead and we have our motion for a stay ready to be filed as soon as the disposition of Mr. Krasicky's motion is made. I think the school districts also anticipate filing that motion.

THE COURT: We will take them up in that order.

MR. LORD: One thing. If your Honor does not [1738] dispose of Mr. Krasicky's motion today we would like to have some convenient date where our motion might be heard later on.

THE COURT: We will take them up in that order. Mr. Sachs, you are on the firing line first I guess.

MR. SACHS: May it please that Court, as the Court has noted we have filed a motion on behalf of Intervening Defendant Federation of Teachers to modify this Court's June 14th order to add to the panel Mrs. Riordan, President of Detroit Federation of Teachers.

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